

Public Utilities



FORTNIGHTLY



December 5, 1940

UTILITIES: THE ALL-AMERICAN
DUPES FOR TAXATION

By Riley E. Elgen

" "

We, Who Are about to Die,
Salute You

By Will M. Maupin

" "

The 1940 Transportation Act and the
Railroad Problem

By Harold D. Koontz

PUBLIC UTILITIES REPORTS, INC.
PUBLISHERS



"I'M NO BOOK AGENT, MR. WATTS --"

"But here's something that every electric utility executive . . ."

"Har-umpf! I just can't wait."

"But, Mr. Watts! Did you know that 97 families out of 100 serve coffee at least once a day?"

"You stagger me, Miss Patterson. But what's that to do with . . ."

"Everything! A nation of coffee drinkers has got to have glass coffee makers."

"Don't ramble."

"I'm not rambling. This book shows that ~~s~~eads of families have irons and toasters and vacuum cleaners, but only 17% have glass ~~c~~offee makers."

"Hmmm! The light dawns, Miss Patterson."

"You haven't heard anything yet. A cleaner adds only 24 KWH to the load, a toaster only 30, an iron only 80 — but a Silex Glass Coffee Maker with Anyheat Control adds 97 KWH. And how'd you like to know the KWH we could add to *our* load for the next five years by pushing Silex?"

"Miss Patterson, where'd you get that book?"

"The Silex representative. He's waiting outside right now."

"Hmmm . . . load building. Show him in!"

Yes . . . Show Him In

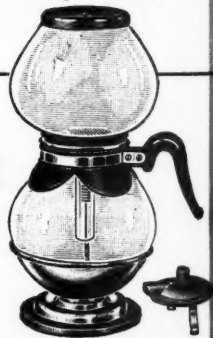
In 5 minutes your Silex representative will take you through the "Silex KWH Campaign Book" and prove that Silex promotion can put more KWH on your load than any other small appliance except a toaster.

Every Electric Silex has a "Self-Timing" Stove!

► It's an exclusive Silex feature, patented so others can't copy. Women love it . . . makes uniform, better-tasting coffee every time. All electric Silex Glass Coffee Makers have "Self-Timing" Stoves. And electric models are priced from \$4.95 to \$29.95. Illustrated, 8-cup, black trim . . .

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ELECTRIC MODEL
with wide neck
for easy
cleaning
\$4.95 retail



Genuine SILEX

THE SILEX COMPANY . . . HARTFORD, CONNECTICUT
Creators of the Glass Coffee Maker Industry

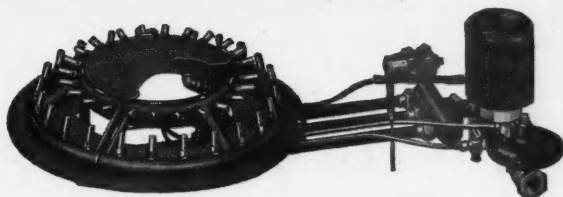
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No. 324-B Barber Burner

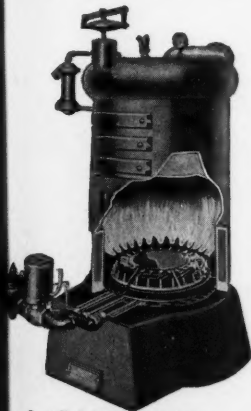
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Public Utilities Fortnightly



VOLUME XXVI December 5, 1940 NUMBER 12

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Q This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.

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DEC. 5, 1940

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Pages with the Editors

SHORTLY after this issue is distributed, members and guests of the National Association of Railroad and Utilities Commissioners will meet in their annual convention at Miami, Florida (December 10th-12th, inclusive). It is the fifty-second such meeting of the state regulatory officials and an event which occasions speculation as to the future of state regulation of public utilities.

THE state commissions have seen their jurisdiction over intrastate as well as interstate phases of railroad operations reduced to a hollow shell, thanks to the Shreveport decision. Attempts to prevent a similar invasion of state regulatory jurisdiction by Federal authorities in the fields of gas, electricity, and communications resulted in the inclusion of restrictive language in the Federal regulatory statutes. Now even these barriers seem destined to be challenged in legal tests by Federal authorities. (See page 801.)

WITH national defense focusing attention on the nation's capital, the trend is obviously towards an ever stronger central government. The voices of those who preach the homely virtues of decentralization seem, for the moment, lost in a general movement in



RILEY E. ELGEN

We can't soak the utilities for taxes without hitting the ratepayers.

(SEE PAGE 775)

which all roads appear to lead to Washington. Yet, state commissions know, perhaps better than any other group, the continuing need for grass roots regulation. They know that "absentee control" is susceptible to just as much abuse in administrative government concentrated in Washington as in financial monopoly concentrated in New York.

THE state commissions can be depended upon to carry on this struggle for the retention of state regulation. If such a cause can be victorious at all, they will certainly be the victors.

ONE phase of utility operations, in which state commissioners may well be closer to a realistic position than theoretical students of regulation in Washington, is in the matter of utility taxation. All commissioners—state and Federal alike—realize taxes on utilities inevitably result in higher rates for consumers. Hence state commissioners who feel a practical responsibility for lower utility rates have occasionally raised their voices against the common legislative attitude of soaking the utilities on tax matters.

In this issue RILEY E. ELGEN, chairman of



WILL M. MAUPIN

Commissioners are always blamed by losers—rarely thanked by winners.

(SEE PAGE 783)

DEC. 5, 1940



Dictograph Intercommunicating Equipment being used by Customer Contact Clerk in securing credit verification from History records. Loud Speaking Equipment allows both hands of History Clerk free for handling necessary records while relaying information.

IMPROVE YOUR CUSTOMER CONTACTS

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Existing record facilities can be linked up to centralized Customer Contact Clerks by means of Dictograph. Applications, Duplicate Bills, Comparative Readings, High Bill Complaints, Discounts, etc., can be efficiently and speedily handled.

May we have our Special Utility Representative call to discuss your problem with you . . . no obligation.

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580 Fifth Avenue, New York

the public utilities commission of the District of Columbia, reveals an astonishing situation with respect to the amount of taxes utilities are required to pay compared with tax burdens of other industries (beginning page 775). CHAIRMAN ELGEN is a Marylander who graduated from St. John's College in Annapolis (B.S., '03) and after engineering work he was a valuation expert for the Interstate Commerce Commission from 1916 to 1932, after which he became a member of the District of Columbia regulatory body.

SINCE this is still the season for post-election wailing, we present a timely and amusing article on the subject by another state commissioner who recently met defeat at the polls. It is written by that veteran, whimsical newspaper editor, WILL M. MAUPIN, who retires this year from the Nebraska State Railway Commission. There is little trace of bitterness in COMMISSIONER MAUPIN's "*ave atque vale*." If anything, it seems to be a subtle valedictory piece of advice to his successor as to what to expect by way of trials and tribulations in the office of an elected state regulatory commissioner.

HAROLD D. KOONTZ, whose article on the 1940 Transportation Act also appears in this issue (page 789), is at present an assistant professor of economics at Colgate University, Hamilton, New York, specializing in the teaching of utility regulation. DR. KOONTZ is a native of Ohio and a graduate of Oberlin College (A.B., '30), Northwestern University (M.B.A., '31), and Yale University (Ph.D., '35). He has had considerable faculty experience since that time.

IN the overwhelming atmosphere of war, quite a number of incidental but interesting problems in the daily news are overlooked. Some of these even have to do with the utility business. Rummaging through our desk, we have unearthed the following items which may show some trend or have some significance which escapes us. We give them to you for what they are worth:

FIRST, we are told that one question a visitor always asks when he gets near Grand Coulee dam is, "What is that whistle tooting for?" It turns out that the whistle, which can be heard for miles around, calls men on the job to 225 telephones placed at various points on the dam. It sounds a particular code for each man, something like the soft but incessant chimes one hears in the department stores. Perhaps the same great mind responsible for a telephone bell turning into a steam whistle can now work on the problem of a telephone signal which will merely nudge a nervous person instead of bringing him to his feet with a ringing start.

DEC. 5, 1940



HAROLD D. KOONTZ

The American railway industry faced the greatest problem in its history in the year 1940.

(SEE PAGE 789)

ITEM number two concerns the interesting conduct of eighty-three members of the National Railway Historical Society, who recently spent an entire day traveling around Brooklyn, New York, on an organized heckling tour. The objects of their derision were the unhappy drivers and passengers of busses. Members of this society, it seems, object strenuously to the replacement of their cherished street car. Of course, the trip was made in chartered trolleys of ancient vintage.

MORE on the business side is the news that four electric companies in Pennsylvania stand to pick up \$100,000 a year for furnishing electricity for the lighting of interchanges and seven tunnels of the brand new Harrisburg-Pittsburgh superhighway. The utilities also furnish power for signaling, ventilating, and auxiliary services. Finally, it appears that the war emergency may give new meaning to the term "floating power" which has heretofore been more or less confined to popular automobile advertisements. The new phrase refers to floating power stations which could be ferried from cities on the Great Lakes through the New York state barge canal and to any coastal point which might need power service. For details see page 814.

IMPORTANT decisions preprinted from *Public Utilities Reports* may be found in the back of this issue.

THE next number of this magazine will be out December 19th.

The Editors

OH SUE! WHILE YOU'RE ASKING,
FIX IT UP FOR DADDY TO GET ONE OF
THOSE NEW PRINTING CALCULATORS
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PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 257-320, 35 PUR(NS)

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 Fairpoint Corporation.....New Bedford, Mass.
 Charleston Navy Yard.....Charleston, S. C.
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 Metropolitan Life Insurance Co....New York City
 Park Chester Housing Development
 Griesdieck Western Brewery.....Belleville, Ill.
 Minot Normal School.....Minot, N. D.
 Southland Paper Mills.....Lufkin, Texas
 Bethlehem Steel Company.....Lebanon, Penna.
 Norfolk Navy Yard.....Norfolk, Va.
 Fairmont City Light Co.....Fairmont, Minn.
 Evenson and Levering Company....Camden, N. J.
 Socony Vacuum Oil Company.....Brooklyn, N. Y.
 City of Bellefontaine.....Bellefontaine, Ohio
 Gallinger Hospital.....Washington, D. C.
 Colorado State Agricultural College
 Fort Collins, Colo.
 Navajo Agency.....Ft. Defiance, Arizona
 Victor Chemical Company.....Mt. Pleasant, Tenn.
 McChord Field, U. S. Army.....Ft. Lewis, Wash.
 B. F. Goodrich Company.....Clarksville, Tenn.
 Canadian National Railways.....Winnipeg, Man., Can.
 Carnation Company.....Sherbrooke, Quebec, Can.
 Alexandria Steam Generating Co....Alexandria, Va.
 South Porto Rico Sugar Company
 Santa Domingo, Dom. Rep.
 George Ziegler Company.....Milwaukee, Wis.
 Atlas Powder Company.....Stamford, Conn.
 Colorado State Capitol.....Denver, Colo.
 Hercules Powder Company.....Hercules, Del.
 U. S. Military Academy.....West Point, N. Y.

Container Corporation of America
 Circlesville, Ohio
 Commodore Perry Housing Project.....Buffalo, N. Y.
 DeKalb State Teachers College.....DeKalb, Ill.
 United States Shoe Corp.....Norwood, Ohio
 The May Company.....Cleveland, Ohio
 United States Naval Hospital.....San Diego, Calif.
 Frankford Arsenal.....Philadelphia, Penna.
 Central Park Pumping Station.....Chicago, Ill.
 Virginia Public Service Co.....Hampton, Va.
 Atlas Powder Company.....Atlas, Mo.
 City of Fairmont.....Fairmont, Minn.
 Froedtert Grain and Maltng Co.....Milwaukee, Wis.
 Sonoco Products Company.....Garwood, N. J.
 Sheridan Brewing Company.....Sheridan, Wyoming
 City of Fort Collins.....Fort Collins, Colo.
 Ingenio Rioquilla.....Buenaventura, Columbia, S. A.
 South Carolina Electric and Gas Co....Parr, S. C.
 American Woolen Company.....Fulton, N. Y.
 Keystone Public Service Company.....Oil City, Penna.
 Alabama Power Company.....Chickasaw, Ala.
 Pennsylvania Power and Light Co.
 Harrisburg, Pa.
 Holyoke Gas and Electric Co.....Holyoke, Mass.
 Durkee Famous Foods.....Chicago, Ill.
 Blanton Company.....St. Louis, Mo.
 Continental Diamond Fibre Co.....Bridgeport, Penna.
 Westinghouse Electric and Manufacturing Company, Lima, Ohio
 Libby, McNeill and Libby.....Chicago, Ill.
 Vanadium Corporation.....Naturita, Colo.
 Philadelphia Electric Company.....Chester, Penna.

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Remarkable Remarks

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—MONTAIGNE



JOHN C. PAGE
*Commissioner, Bureau of
Reclamation.*

"None of the work of the Bureau of Reclamation is incompatible with national defense."

EARL C. MICHENER
*U. S. Representative from
Michigan.*

"The expediency of the hour is no excuse for placing doubtful laws on the statute books."

SUMNER T. PIKE
*Member, Securities and Exchange
Commission.*

"The effect of substantial private placements upon our capital markets should be probed further."

EDITORIAL STATEMENT
Gas.

"It is a source of satisfaction and pride to realize the gas industry will never wait for conscription."

JAMES E. MURRAY
U. S. Senator from Montana.

"... there is scarcely a town in America which is not worth more physically because of the Work Projects Administration program of the New Deal."

FRANCIS BIDDLE
U. S. Solicitor General.

"I do not hold that, to meet the threat of war and build our land into military power, the sacrifice of any fundamentally democratic basic assumption is necessary."

SUMNER H. SLICHTER
*Professor, Harvard Graduate
School of Business
Administration.*

"For the Federal government to undertake to pass on the qualifications of the representatives of organized labor would mean an end of a free labor movement. And the step to Federal regulation of the qualifications of employers would be a short (and a logical) one."

JOHN BENSON
*President, American Association
of Advertising Agencies.*

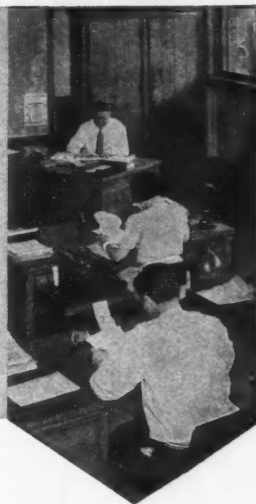
"Perhaps the present crisis is a blessing in disguise, in building a true democracy in this country, powerful because united, welded by a common danger into a nation which will lead the world, not just in democracy but in respect for the common man—his dignity and freedom."

EDITORIAL STATEMENT
The Saturday Evening Post.

"What your government has done for the people may be noted as a statistical fact. At least one family in every four through the entire country now draws sustenance from the United States Treasury. What, at the same time, your government has done to the people cannot be expressed statistically."



The office
can learn from
the factory about
**COST
REDUCTION**



Many executives accustomed to studying cost reduction methods in the factory are beginning to realize that the same fundamental principles can be applied to reducing office costs. For example:

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Director of education and commercial research, Long Island Lighting Company.

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EDITORIAL STATEMENT
Industrial News Review.

"What the country needs is the products of industry, not the plants. If there are recalcitrant industrialists who refuse full support to the government, there are far more effective ways of forcing them into line than 'confiscating' their factories."

GEORGE WHARTON PEPPER
Former U. S. Senator from Pennsylvania.

"Government, considered realistically and quite apart from partisan considerations, is at any given time nothing but a rather miscellaneous group of men and women, few of whom as individuals are competent to launch and run any business enterprise whatever."

ELMO ROPER
Research director, Fortune's public opinion survey.

"It is, in my opinion, futile to hope that some day the public will wake up to whatever advantages there are inherent in gas. It isn't their job to discover gas; it is your [gas utility's] job to tell them. It is your job to run a business that makes them think it is identified with progress, not oblivion."

EMMETT F. CONNELLY
President, Investment Bankers Association of America.

"Few business men willingly thrust their heads into the noose of government credit; it is too easy for somebody to jerk the rope. The procedure may look all right—just this once. But the precedent is established, the ball is started rolling, and by an insidious process the easy habit of going to Washington with hand outstretched toward the Treasury begins to be established."

N. M. ARGABRITE
Vice President, American Gas and Electric Company.

"I have no quarrel with the Federal government or any state government even subsidizing [rural electric] lines where a regular power company cannot afford to go, if that is the wish of our people. I do not think it would become me to be either for or against such a development or such a procedure, but I do resent very much an effort to inject political lines of thought into this subject."



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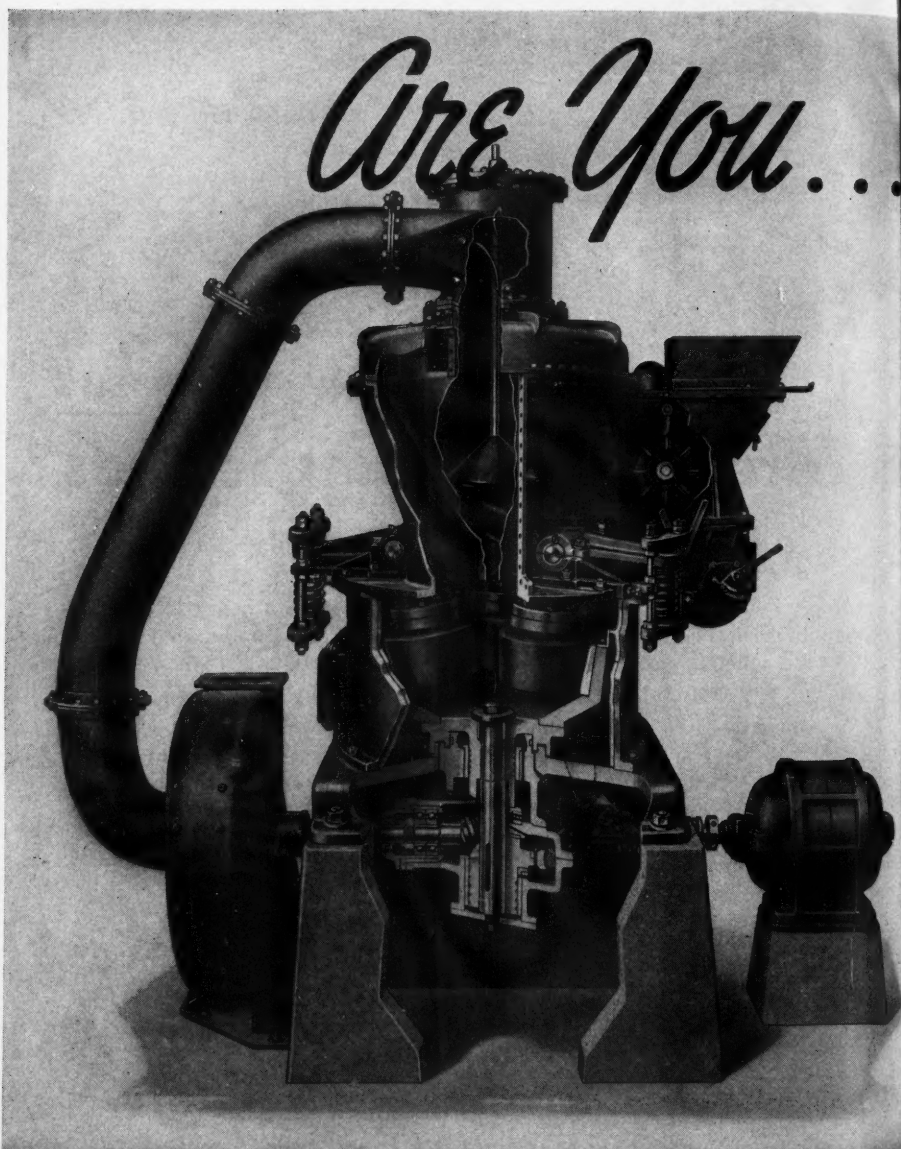
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COMBUSTION

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Up-to-Date ON THESE "REASON WHY" FEATURES OF THE . . .

10 REASONS WHY

1 WIDE CAPACITY RANGE

Output of the mill can be varied by small increments from minimum to maximum capacity with practically constant fineness of pulverization.

2 EFFICIENT PULVERIZATION

The grinding principle employed and effective use of the grinding surfaces combine to assure the highest efficiency of pulverization.

3 LOW POWER CONSUMPTION

Low friction losses, a worm gear drive which permits use of constant high-speed motor, and maximum utilization of the grinding surfaces, combine to reduce the power required per ton of coal pulverized.

4 CONTINUOUS SERVICE

Existing service records prove the mill is capable of operating continuously at full load, month after month, without shut-downs. Grinding adjustments are made while the mill is operating.

5 SIMPLIFIED OPERATION

The automatic feed is instantly adjustable. One standard constant-speed motor operates both mill and fan. Few parts and rugged construction help to avoid mechanical trouble.

6 POSITIVE LUBRICATION

To assure continuous operation, there is positive oil circulation to the main shaft bearings with the gear mechanism running in oil. All operating parts are lubricated from outside while the mill is running.

7 QUIET OPERATION

With no metal to metal contact between the grinding surfaces, pounding and vibration are eliminated. Worm gear drive with ball bearings, main shaft with roller bearings and balanced operation assure quietness.

8 CONVENIENT FINENESS CONTROL

The classifier vanes that control fineness of product and the inner cone which controls the return of rejected oversize are conveniently adjustable from the outside.

9 LOW MAINTENANCE

The few wearing parts have hardened steel surfaces. The rollers work only on material, never against metal. Correct grinding clearance between rollers and bull ring are easily maintained by exterior adjustment.

10 EASY REPLACEMENTS

Inspection and repairs are made without removing the classifier head or dismantling the piping. The removal of one side plate provides complete accessibility to the grinding chamber for easy removal of bull ring and rollers.



There have to be reasons for the remarkable acceptance won by the C-E Raymond Bowl Mill in a field where experimentation with new designs of equipment is never taken lightly. Previous conceptions of pulverizer performance were revolutionized following its introduction only five years ago. At that time, the first commercial size of the C-E Raymond Bowl Mill had completed exhaustive tests in a large public utility plant, demonstrating the superiority of a new design which combined the best advantages of two standard types — the capacity range of the impact mill and the economical operation of the roller mill.

Since then the C-E Raymond Bowl Mill has been selected by many of the country's leading utilities for use in both direct fired and storage systems. Records of present-day performance continue to confirm the improvement which it introduced and provide a convincing demonstration of economy and efficiency which is rapidly increasing the list of satisfied users. The "reasons why" are listed in the column at the left. A perusal of them will provide a brief explanation of why the C-E Raymond Bowl Mill is today the "best buy" in coal pulverizers.

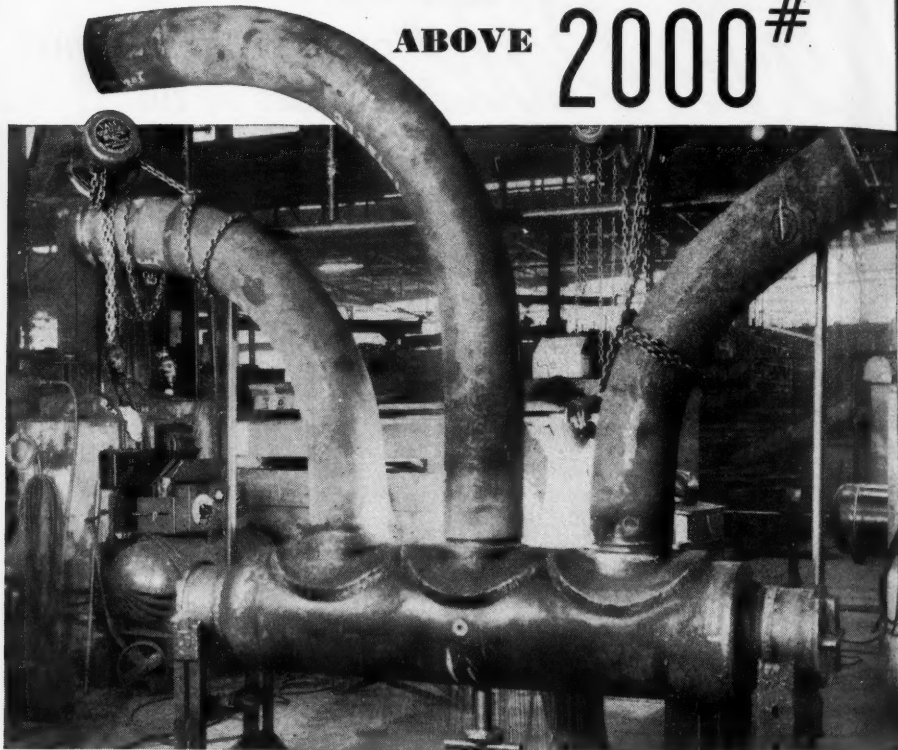
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COMBUSTION ENGINEERING COMPANY, 200 MADISON AVENUE, NEW YORK, N. Y. • CANADA: COMBUSTION ENGINEERING CORPORATION, LTD., MONTREAL

ENGINEERING

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With the announcement of new power installations almost invariably come new highs in working pressures. As these pressures climb, piping requirements become increasingly complex.

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Conveniently located plants assure "time-table" delivery on any power or process piping installation. Grinnell Co., Inc., Executive Offices, Providence, R. I. Branches in principal cities of the U. S. and Canada.

PREFABRICATION BY

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WHENEVER PIPING IS INVOLVED

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A complete manual of central station practice

Editor-in-Chief
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Engineers.

Assisted by a Staff of
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Here is a complete guide to the design, operation and maintenance of electric systems, covering every phase of the subject from the generation of electricity to its distribution.

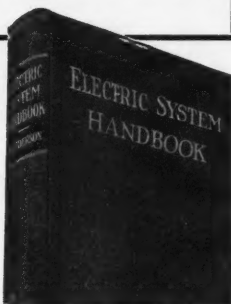
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The book answers the demand for a practical handbook which will tell the story of the electric system as a whole—beginning with the fundamentals of electricity and generation and carrying on through transformation, transmission, power lines, design, construction, operation, repair, inspection substations, etc. The text is written in the language of the everyday workman. Higher mathematics is entirely omitted and all technical expressions are fully explained.

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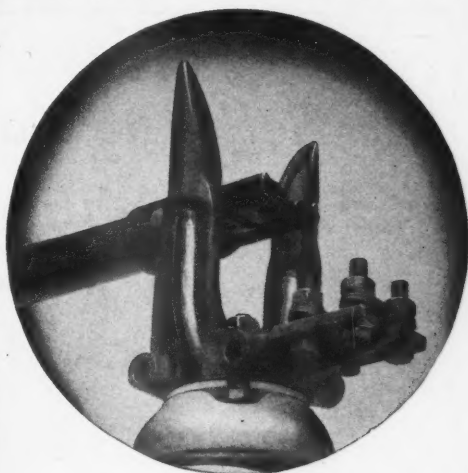
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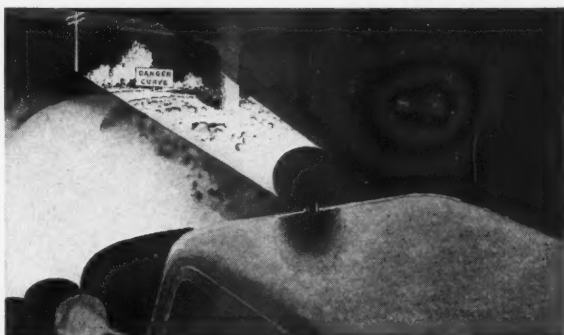
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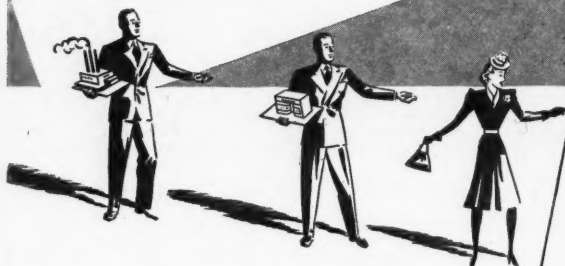
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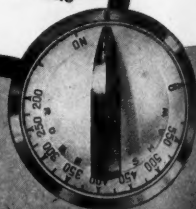
3. GREATER

Accuracy

Each time oven is used, thermostat must be set. Each time oven is turned off, thermostat setting is automatically cancelled. Automatic cooking with gas is made more certain and brought into wider use.

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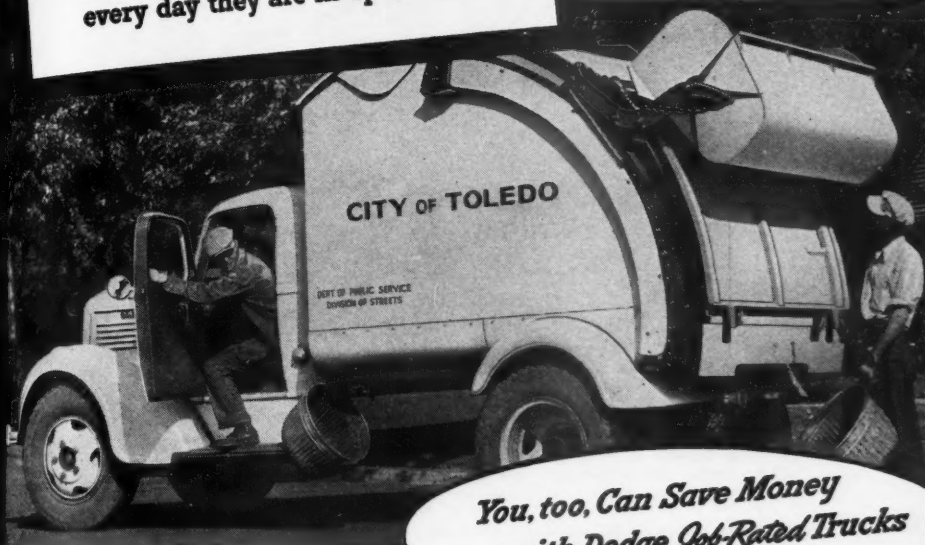


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"Every one of the 42 Dodge trucks we have in operation is giving outstanding economical service . . . this is true not only of the trucks we purchased from you during the last year, but every Dodge truck we have placed in service since 1935 . . . the 1½-ton units placed in operation over 5 years ago are still on the job and operating with an efficiency that compares favorably with the later model Dodge trucks."

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• One word covers the money-saving satisfaction a Dodge Job-Rated truck gives its owner. That word is "Quality" . . . Dodge Quality. The extra thousands of miles they stay on the job are the direct result of **QUALITY engineering, QUALITY materials and QUALITY workmanship** in trucks that fit the job. Start saving now with low-priced, high-quality Dodge Job-Rated trucks! See your Dodge dealer.

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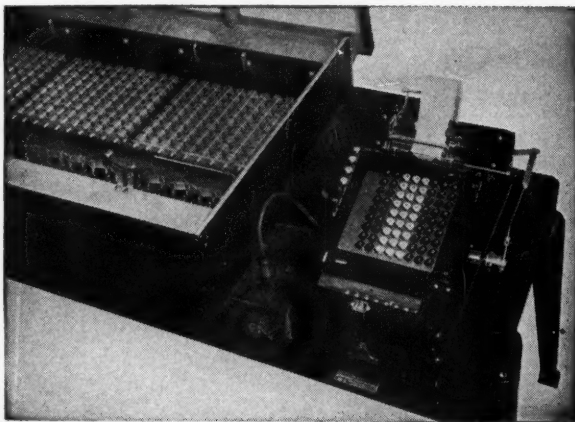
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Job-Rated **TRUCKS**

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R & S Bill Frequency Analyzer: developed for our Utility Rate Service. The kw.-hrs. billed are entered on the adding machine keyboard. A tape is prepared of all items and a consumption total accumulated which serves as a control. At the same time—through this *single* operation—the bill count for each kw.-hr. step is made by the electrically controlled accumulating registers.

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**This outdoor bus
jumps a 64-foot span**



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The bus runs 430 feet, indoors and out. Aluminum was chosen because it offered the best combination of mechanical and elec-

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Light in weight, Aluminum buses—tubular, flats, channels or angles—place less burden on supports. Structures can be lighter, with the result that you save money all around. Standard construction methods and simple, inexpensive fittings are used with Alcoa Aluminum buses. ALUMINUM COMPANY OF AMERICA, 2134 Gulf Building, Pittsburgh, Pennsylvania.



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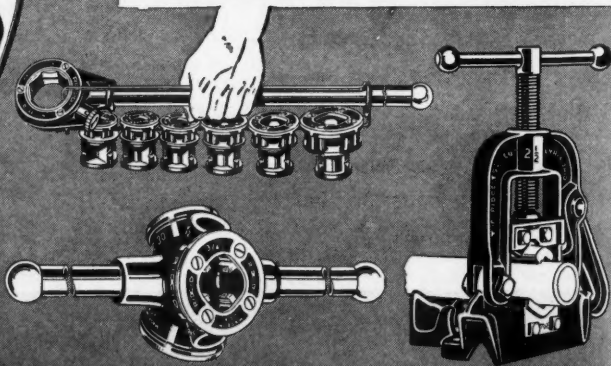
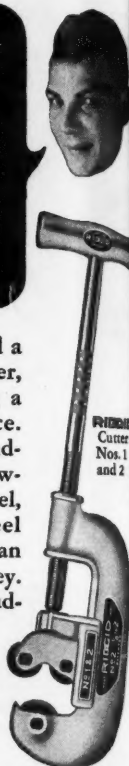
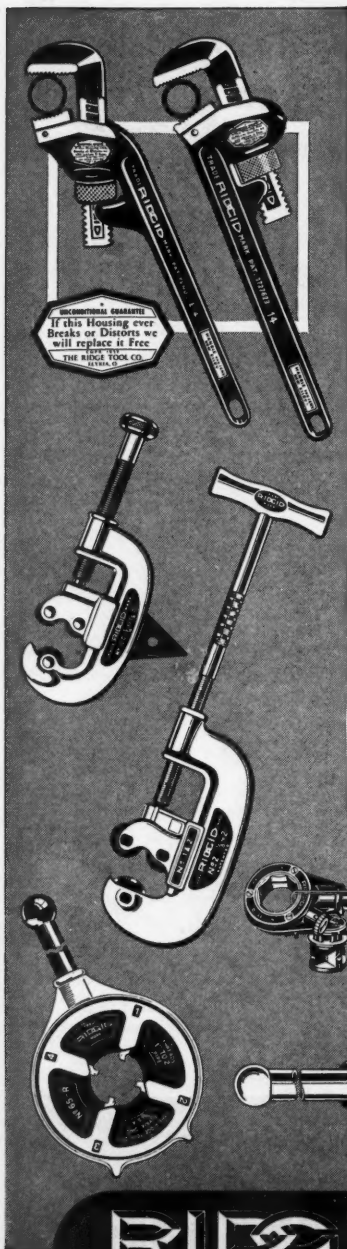


If you haven't tried a **RIDGID** Pipe Cutter, you've been missing a pleasant experience. For this modern standard **RIDGID** has a new-

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RIDGID PIPE TOOLS



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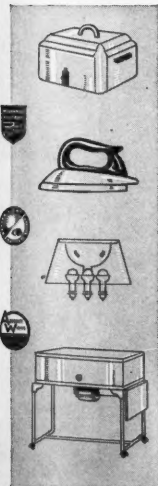


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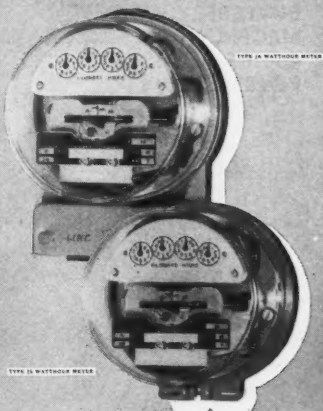
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**PUBLIC UTILITY
REGULATION****571 pages, \$4.00**

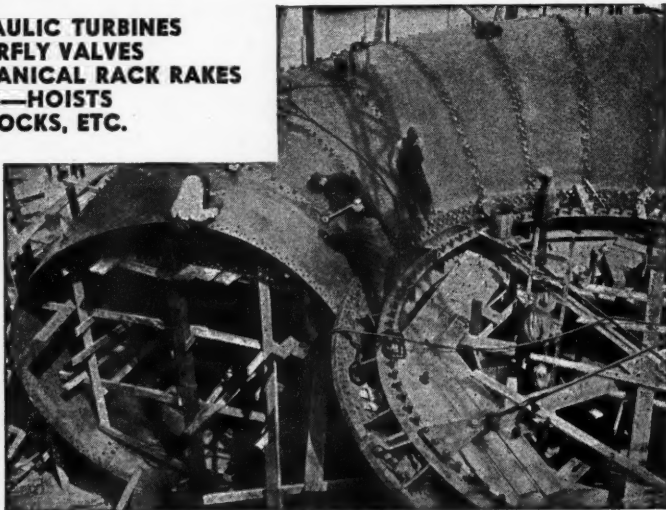
AN analysis of the nature, extent, and problems of public utility regulation in the United States with emphasis upon the expanding role of the Federal Government in the regulation of public utilities, its activities in undertaking power projects and promoting rural electrification, and the issues involved in governmental ownerships. The well-rounded treatment and critical viewpoint will be of aid to all who are interested in evaluating the present status of public utility regulation, its strengths, weaknesses, and significance for privately-owned industry.

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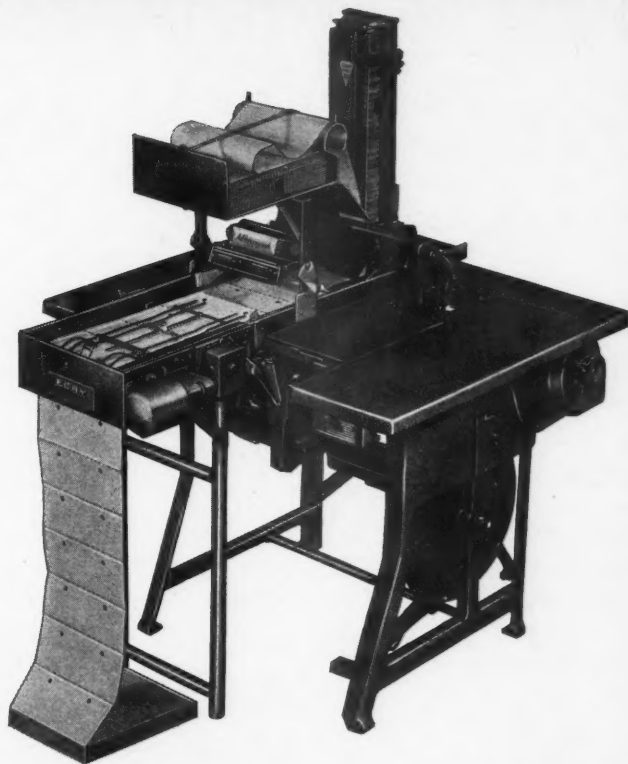
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DEMONSTRATIONS

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There's no such thing as a standardized condenser

It's a highly specialized engineering job to build just one condenser. Elliott engineers have built many — each one carefully designed to do its particular job.

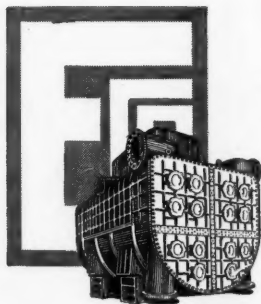
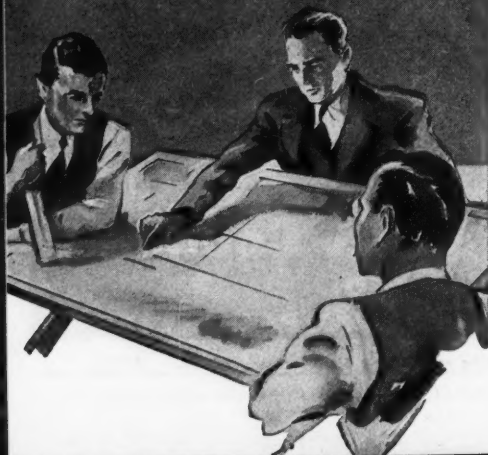
Elliott engineers thoroughly and positively go into details—load factor, water temperature, pumping heads, value of vacuum, water quality and quantity, initial cost, and operating expense — all are analyzed for the individual requirements. The right condenser for the job is always the result.

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COMPANY**

*Heat Transfer Dept.
JEANNETTE, PA.*

*District offices in
Principal Cities*

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Utilities Almanack



DECEMBER



5	T ^h	¶ National Institute of Municipal Law Officers convenes, Washington, D. C., 1940. ¶ American Society of Mechanical Engineers ends session, New York, N. Y., 1940.
6	F	¶ Mid-West Industrial Gas Sales Council convenes, Chicago, Ill., 1940. ☾
7	S ^a	¶ American Society for Public Administration will convene, Chicago, Ill., Dec. 29, 30, 1940.
8	S	¶ Society of Automotive Engineers will hold meeting, Detroit, Mich., Jan. 6-10, 1941. ¶ Investment Bankers Association opens convention, Hollywood, Fla., 1940.
9	M	¶ Nebraska Irrigation Association holds meeting, McCook, Neb., 1940.
10	T ^u	¶ National Association of Railroad and Utilities Commissioners starts annual convention, Miami, Fla., 1940.
11	W	¶ National Chemical Exposition, sponsored by Chicago Section, American Chemical Society, begins, Chicago, Ill., 1940.
12	T ^h	¶ American Transit Association, Bus Division, will hold Midwest regional conference, Kansas City, Mo., 1940.
13	F	¶ Association of General Contractors, Carolina Branch, opens convention, Pinehurst, N. C., 1940.
14	S ^a	¶ American Society of Civil Engineers will hold convention, Baltimore, Md., Jan. 15-18, 1941. ☼
15	S	¶ National Public Housing Conference will be held, New York, N. Y., Jan. 24-26, 1941.
16	M	¶ American Society of Heating and Ventilating Engineers will convene for session, Kansas City, Mo., Jan. 27-29, 1941.
17	T ^u	¶ American Institute of Electrical Engineers will hold winter convention, Philadelphia, Pa., Jan. 27-31, 1941.
18	W	¶ Southern Gas Association will hold joint meeting with A.G.A. Southern-Southwestern regional gas sales conference, Dallas, Tex., Feb. 10-12, 1941.



Photo by Peter A. Juley & Son

Courtesy of Cunard Steamship Co.

Ships of Leif Ericsson

Pendentive, Cunard building, New York city

Public Utilities

FORTNIGHTLY

VOL. XXVI; No. 12



DECEMBER 5, 1940

Utilities: The All-American Dupes for Taxation

It is not generally realized to what great extent utility taxes, on the average, exceed tax payments by other industrial groups. This article, which compares utility and nonutility tax payments, raises a serious question of tax policy. Why should utilities pay so much more in taxes than any other kind of business? Is the answer solely because of the practical convenience of collecting taxes on utilities? Or is there a more equitable or social basis for soaking the utilities with taxes as compared with unregulated business enterprises?

By RILEY E. ELGEN

CHAIRMAN, DISTRICT OF COLUMBIA PUBLIC UTILITIES COMMISSION

IN a democracy such as ours, in time of war, taxes are essentially the handmaiden of Mars. Because in such a capitalistic nation we do not draft labor and industry but each pays his part through taxes in hiring the men, buying the materials, in obtaining not only the finished products necessary to total defense, but in the conduct of all things essential to it. The only way the money to pay for these objectives can be successfully raised in the end is by taxation.

This should not be discriminatory with respect either to classes of individuals or businesses. And naturally those who are charged with regulating business and who are responsible for keeping its rates, tolls, and charges at the lowest level consistent with legal requirements do not like to witness any greater tax burden in the bills the public has to pay than is absolutely necessary. It is for this reason that the following little known or rarely recognized fact gains especial signifi-

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cance: *It is observed that regulated industries, such as gas and electric utilities, railroads, communications, pay two and three-quarters times as much for taxes from each dollar of business done as do unregulated industries.*

In other words, if the latter paid relatively the same proportion of their revenues in taxes as regulated industry, the tax collector would receive around 1,966.3 million dollars more than he does from the ones here discussed. If a tax rate comparable to that of the electric utilities were paid by all other regulated as well as that part of the unregulated industry investigated by us, the public coffers would be increased by 2,658.5 million additional tax dollars annually.

While we have not the advantage of a complete statement of what all unregulated industry pays annually in taxes, we do have the total annual income and taxes paid by all utilities¹ and 512 of the largest unregulated businesses having their securities listed with the Securities and Exchange Commission. These concerns have been segregated into 40 different categories. The 512 industries used in this study are far better than just a fair sample. They do business annually aggregating over 26,033 million dollars, and have securities aggregating over 16,762 million dollars registered with the Securities and Exchange Commission and outstanding in the hands of the public.

AN interesting fact which might be kept in mind as a sort of by-product from this analysis is that 16.4 per cent of the nonutility securities are bonds, 20.3 per cent preferred stock,

and 63.3 per cent common stock. Compare this with the utilities (45 billions in securities), which run around 50 per cent bonds, 10 per cent preferred, and 40 per cent common stock.

These nonregulated businesses do not include all large American industrial units. For instance, Ford is not included under "autos." So it is with many others. The data from which these facts are taken came from reports of these registrants to the Securities and Exchange Commission. Quite naturally these data are thought to be reliable as the reports are made under oath by responsible officers of the registered corporations. Included in this study is between 14 and 15 per cent of all taxes paid in the nation.

You observe looking at Table I that the range of taxes is from 6 cents out of each dollar taken in by telegraph companies to as high as 15.5 cents out of each pipe-line dollar, with an average of 11.1 cents for all regulated industry or public utilities as a group. In contrast with these figures other tables of unregulated industry disclose that the different groups have much lower tax bills to pay out of their dollar of revenue. These range all the way from 1.3 cents out of each meat packer's dollar to as high as 8.6 cents out of each toilet preparation and soap manufacturer's dollar of business done. Out of the 40 different categories of concerns shown three pay less than 2 cents; eleven pay less than 3 cents; twenty pay less than 4 cents; twenty-seven pay less than 5 cents, and thirty-two pay less than the lowest amount paid (6 cents) by any one of the regulated businesses or public utilities; thirty-nine pay less than 7 cents and only one pays higher.

¹ See Table II, p. 779.

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FROM these facts it can be seen that for some reason or other customers of regulated industry are called upon to bear tax burdens far in excess of those of other lines of endeavor. Now, don't get the idea that the Federal income tax burden of utilities is so large that it supplies the answer. Out of each tax dollar paid by unregulated industry 68 cents goes to the local tax collector and 32 cents goes to the United States Collector of Internal Revenue. For all industry, regulated and unregulated, 69 cents out of the tax dollar went to the local collector and 31 cents to Uncle Sam. So it is quite obvious that the difference between the two groups of industry cannot be attributed to Federal taxes because very little difference exists.

In Table II is shown in millions of dollars the annual volume of business done by each utility named, together

with the total taxes paid and the proportion which one bears to the other. The total annual business, 10,503.8 millions of dollars, and the aggregate of 1,161.3 millions of dollars of taxes paid certainly show that this group of industries is perhaps the foremost tax-paying group in the nation. Some of them are in dire need of modernization. The 184 millions annually that the rails pay for taxes in excess of the average paid by unregulated business could profitably be invested in new equipment in the interest of national preparedness. This is particularly true of the railroads.

OF course, when it comes to moving people, materials and supplies, or, for that matter, armies, guns, ammunition, and performing the essential service of supply for our field forces,



Table I

UTILITY AND NONUTILITY TAXPAYERS

This shows, in parallel columns, all the utilities on the left, and unregulated businesses on the right. The tax rate percentage is in terms of gross revenue. Note these utilities are compared with a similar number of unregulated businesses paying the highest relative taxes.

<i>All public utilities</i>	<i>Cents out of each dollar of business that goes for taxes</i>	<i>The highest tax-paying unregulated industries</i>	<i>Cents out of each dollar of business that goes for taxes</i>
<i>Name</i>	<i>Cents</i>		<i>Cents</i>
Pipe lines	15.5	Toilet preparations	8.6
Electric	14.3	Agricultural machinery ..	6.6
Telephone	13.7	Nonferrous	6.5
Manufactured gas	13.7	Automobiles	6.4
Street cars	10.0	Aircraft	6.4
Bus companies	10.0	Cement	6.4
Natural gas	9.8	Sugar refining	6.0
Railroads	8.9	Clay products	6.0
Electric railroads	8.8	Office machinery	5.9
Trucking	6.9	Tires and other rubber... ..	5.5
Radio telegraph	6.6	Steel	5.5
Pullman	6.3	Chemicals and fert.	5.3
Express	6.2	Biscuits and crackers	5.2
Telegraph	6.0	Oil refineries	4.9
Weighted average	11.1	Weighted average	5.7

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we are not now dependent upon rail or water lines to the extent we were in the last World War. On the other hand, if we were dependent on the rails for transportation to an equal degree now as we were during the World War, we should be in a devil of a jam.

Because 71 out of each 100 locomotives of the railroads actually are veterans of the other World War. Some were even then approaching the end of their useful life. Only 6 out of the typical 100 power units are less than ten years old and most of them were built for either yard or passenger train service. Few of these comparatively modern ones were intended for use in handling freight. In fact, over one-third of these locomotives were bought either during the Taft administration or prior thereto, and nearly one-third of the remainder during the latter half of Taft's and the first half of Wilson's administration. Of those remaining, 37 per cent first saw rail service during the last World War. Yes, we have a lot of veteran locomotives. They have already been through one World War.

In view of the fact that twenty-five years is generally considered by informed authorities to be the useful life of rail locomotives and cars, it must be apparent that as a whole the railroad equipment is nearing the end of its useful life.

IF there had been continuing prosperity instead of endless depression since 1930, and if the rails had kept up the former rate of renewal of their power units, then at least all locomotives bought during the Taft and half of the early Wilson administrations would long since have been made

into shrapnel. During the eight years before the depression they bought 2,066 new locomotives annually. Then along came the depression and the rails had no use for the equipment they already possessed. They were burdened with taxes, and not in a financial position to buy thousands upon thousands of the latest model locomotives and hold them for either a return to prosperity or the coming of a war. As a business proposition such a move would have been asinine in the extreme. Of course, some of these old hoggers have been modernized as far as business conditions and mechanical feasibility warranted.

So don't let anyone kid us about our modern rail locomotives because we just do not have many such things. Furthermore, even if all the locomotives we do have were modern, efficient ones, for every 100 we had when we entered the last World War we now have only 70. For that matter, because of lessening demands for freight and passenger service during the past decade of lean years, the railroads only have 73 freight and 73 passenger cars for each 100 they had when we entered the last World War. Here again, in cars, we see the devastating effects on modernization due to the lack of something or somebody to haul. Thus a shift in the tax burden would help materially in correcting these unsound transportation conditions.

WHEN it comes to preparing for war it is just as essential to have a modern transport to act as a service of supply as it is to have modern guns, airplanes, tanks, warships, and a modern army, navy, and air corps. Well, there is one thing certain, and that is

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Table II

TAXES PAID BY UTILITY GROUPS

This shows the annual volume of business done by the fifteen regulated industries listed, the total taxes paid, and the cents paid out of each dollar for taxes.

Kind of Utility	Volume of business Million Dollars	Taxes paid Million Dollars	Cents paid out in taxes for each dollar taken in
			Cents
Pipe lines	\$ 248.6	\$ 38.6	15.5
Electric	2,548.8	365.6	14.3
Telephone	1,199.1	163.7	13.7
Manufactured gas	369.9	50.6	13.7
Street car	762.7	76.3	10.0
Bus	143.1	14.5	10.1
Natural gas	455.5	44.6	9.8
Railroads—steam	3,995.0	355.7	8.9
Railroads—electric	42.7	3.7	8.8
Trucking	425.4	28.8	6.9
Radiotelegraph	12.2	0.8	6.6
Pullman	60.2	3.8	6.3
Express	112.0	7.0	6.2
Cables	11.4	0.7	6.1
Telegraph	116.8	6.9	6.0
Totals and Average	\$10,503.4	\$1,161.3	11.1

that we don't have a modern rail system.

Of course, we have means of transportation of soldiers and supplies that we did not have during the World War. Since the end of the World War (1914-1918), the whole pattern of both public and private transportation in this country, and to a lesser extent abroad, has radically changed. Full advantage appears to have been taken of these changes by the totalitarian governments in their pursuit of this miserable war for world domination.

As for our nation, if automotive

transportation be of so great importance in making war, we too are plentifully supplied at least with that useful instrument of modern warfare. For when Kaiser Wilhelm II began the rape of Belgium in 1914 we had 548,139 family autos and in all a more or less heterogeneous collection of 24,900 motor trucks in this country. But when Herr Hitler, dictator of Germany, began the rape of Poland in 1939 and plunged Europe into another World War we had 26,250,000 family autos and 4,460,000 motor trucks. In other words, there are now 50 family

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cars owned and used as transportation vehicles where there was only one jalopy found at the beginning of the other World War.

THE family car has become as much of a necessary part of what we call home as is the kitchen sink or the bathroom and has grown by leaps and bounds, as the prices and purchase terms of them have been lowered to where the big bulk of the families can at least meet the payments on them. On the other hand, the most notable growth has been that of the motor truck. When the paper hanger with the smudge on his upper lip turned butcher and began blitzkrieging and cavorting around Europe a year ago come last summer, we had on our magnificent hard surface roads 180 trucks where there was only one when Kaiser Bill's Grey Hordes swarmed over the blood-soaked soil of north France and Belgium.

Like the rails, operators of busses and trucks have been burdened too with taxes far in excess of unregulated industry. Were more equitable taxation accorded them they too might increase the quality of their equipment and services to the benefit of national preparedness and security.

If the telephone and electric utilities paid taxes commensurate with that paid by unregulated industry and business, it would be possible to reduce the cost of those services to their customers in an amount approximating \$368,000,000 annually.

Of course, the matter of taxes paid by industry and business in general is an item of cost of manufacture, operation, or service to be passed along to their customers. Thus it will be seen

those who are charged with the duty of regulation are interested in seeing that the public does not pay taxes through utility rates, higher than the customers of textile and fabric manufacturers, chain groceries, other chain stores, department stores, mail order houses, and others.

PERHAPS if it were not possible to shift utility taxes to the backs of the customers through the utility rate structures and accounting systems, more of a fight might be made before legislative bodies to convince them that tax structures ought not to be increased in that direction. Perhaps the determined fights made by nonregulated competitive industry are the reason that those businesses pay so much less out of their total income to the tax collector.

It is not enough for competitive businesses to be able to pass their taxes along to their customers, because some one or more such concerns may elect to absorb his taxes and not pass them along and then disaster may occur to the trade of his competitors. Regulated business has no competitors, so it counts on putting the extra charges on the backs of its customers. In fact courts and commissions have laid down that principle and even though there were an inclination to do otherwise, law and regulation have so decreed.

As to Table I, you will observe a fair demonstration of what each utility pays out of its income for taxes, compared with the very *highest* taxpayers of the nonregulated industries. Although the sum total of the business transacted in the course of the year by these highest tax-paying nonregulated businesses is somewhat greater than

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Table III

TAXES PAID BY NONUTILITY GROUPS

	<i>Volume of business Million Dollars</i>	<i>Taxes paid in Million Dollars</i>	<i>Cents paid out of each Dollar for Taxes Cents</i>
<i>Nonregulated industries</i>			
Toilet preparations—Soap	\$ 348.8	\$ 29.9	8.6
Agricultural machinery	603.3	39.5	6.6
Nonferrous metals	1,079.6	70.1	6.5
Automobiles	2,254.1	145.4	6.4
Aircraft	273.9	17.3	6.4
Cement	60.1	3.8	6.4
Sugar refineries	265.1	15.7	6.0
Clay products	41.8	2.5	6.0
Office machinery	643.9	38.3	5.9
Tires and other rubber products	796.2	44.0	5.5
Steel	2,254.8	125.4	5.5
Chemicals and fertilizers	789.0	41.6	5.3
Biscuits and crackers	158.5	8.2	5.2
Oil refineries	3,765.9	185.8	4.9
Motion pictures	407.1	20.0	4.9
Total	\$13,742.1	\$787.5	5.7

LOWER CLASS TAX-PAYING GROUPS

Drugs and medicines	237.1	11.2	4.7
Building equipment	281.1	12.9	4.6
Grocery specialties	449.0	20.2	4.5
Containers—cans—glass	483.8	20.9	4.3
Printing and publishing	74.3	3.2	4.3
Building materials	277.8	10.9	3.9
Bread and cakes	201.1	7.3	3.6
Paper and allied products	435.6	15.7	3.6
Chain stores	893.8	30.3	3.5
Rayon yarn	51.2	1.8	3.5
Auto parts	1,175.0	40.8	3.4
Carpets, rugs, floor coverings ...	90.1	3.0	3.3
Publishing newspapers, mags., etc.	98.6	3.3	3.3
Upholstery	37.2	1.1	3.0
Textiles and fabrics	211.1	5.9	2.8
Paints and varnishes	93.8	2.5	2.7
Cigarettes *	938.9	24.8	2.7
Food canning—Preserving	188.0	4.9	2.6
Department stores	1,158.3	30.7	2.6
Dairy products	666.1	16.7	2.5
Mail order houses	1,046.7	25.4	2.4
Apparel	90.3	2.1	2.3
Vegetable oils	117.8	1.6	1.4
Chain groceries	1,047.0	15.3	1.4
Meat packers	1,947.2	25.5	1.3
Total—Table III	\$26,033.0	\$1,125.5	4.3
Total—Regulated Business ..	10,503.4	1,161.3	11.1

Grand Total—Regulated and
Unregulated

Aggregate tax collections in nation\$14,000,000,000+
Per cent represented above16.3%

* Does not include special Federal stamp tax.

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that of the regulated business, the former pay *proportionately* only about half as much of its gross in taxes as do the regulated business. In Table III, nonregulated businesses are investigated in more detail and the volume of business and comparative taxes paid by each group are shown.

HERE is another social angle to consider. Utility taxes have more of a direct bearing and effect upon the family budget than taxes paid by manufacturers of paints and varnishes, auto parts, building materials, and many other lines of business shown in Table III and having a lesser tax burden.

For instance, how much do the manufacturers of steel products have to charge their customers—other great manufacturing concerns such as ship building companies? It is less than half as much as the amount utilities have to include in the family utility dollar on account of the expense of taxes. In other words, electric utilities have to include in the family electric bills 2.6 times and the telephone utilities 2.5 times as much, on account of taxes, as tire companies, steel companies, and chemical manufacturers include in their sale dollars to cover that item of expense.

Since the cost of war preparedness will ultimately unquestionably make necessary a rearrangement of methods of taxation, it might be well to see that

each kind of business is put upon more of a basis of tax equality. Then those who buy products and services will not pay tax burdens out of proportion to those which others pay when purchasing their particular needs.

Further, some thought should be given to the methods of taxation presently in vogue to determine whether our present plan of taxation actually yields equitable results when applied to different forms and kinds of industry and business. The studies here presented indicate a considerable measure of discriminatory taxation. These point rather definitely to the necessity for planning fundamental revisions.

After all, those engaged in industrial activities and, in fact, in all of the businesses here treated, seek to treat taxes as just another form of expense to pass along to their customers. Yet, from the studies shown, out of 40 different kinds of unregulated businesses, it is not possible to find a single definite pattern which tends to put any particular combination in any consistent category with respect to tax payments. After the highly taxed utility, no other group emerges as the next highest taxed or the lowest taxed. It is not possible to get either rhyme or reason out of their taxes paid in relation to the volume of business done. The contrast whereby customers of the utilities are clearly shown to be in the highest tax-paying group is too obvious for comment.

Entertainment by Telephone

“NICKEL-in-the-slot phonographs connected by telephone lines to a central control office are now being tried out in Texas. A customer who drops in a nickel is automatically connected with an operator who asks for his selection, picks it out from a stock of some 5,000 records, and plays it.”

—EXCERPT from *Newsweek*.



We, Who Are About to Die, Salute You

A Nebraska railway commissioner, in retiring from office, gives a bit of advice, based upon an interesting experience, to those who may be cast for the regulatory rôle.

By WILL M. MAUPIN

AFTER six years of conscientious service on the Nebraska State Railway Commission, I was defeated for renomination. The reason? I did not get enough votes. Why? Because of many reasons. One was that just as the primary campaign opened I had to submit to an appendectomy, therefore could do nothing other than rely upon a campaign of pamphlets instead of making a personal campaign. I had to rely upon friends, and it seems that I did not have enough. Another reason was, seemingly, that every time I rendered a decision, always in consonance with the law and the evidence, I offended more than I pleased; and those I offended were more active in opposition than those I pleased were in support. Like the Negro supporter of Maverick Brander in Tim Murphy's famous "Texas Steer," I discovered that "office seekin' is mighty po' business."

No railway commissioner in Nebraska has ever served three terms, and only four or five in the thirty-three years of the commission have served two terms. I deem myself lucky to have been permitted to serve one term. And even luckier to have been defeated in the primary instead of making an expensive campaign for reelection and then meeting defeat, which seems very likely to be the fate of Democratic candidates in such independent voting states as Nebraska. It seldom happens in Nebraska that all executive state officers belong to the same party. Our governor is a Democrat; our lieutenant governor is a Republican; our secretary of state is a Democrat; our auditor is a Republican; our treasurer is a Democrat by appointment succeeding a Republican; our attorney general is a Republican; and our superintendent of public instruction is a nonpartisan. One rail-

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way commissioner is a Republican; another, myself, is a life-long Democrat; and the third was elected as a Democrat, although six years ago he was a candidate for the Democratic nomination and couldn't vote the Democratic primary ballot because he was a registered Republican. Classify him politically as you will.

All this to show that party ties sit lightly on the average Nebraska voter.

By and large, the office of railway commissioner in Nebraska is the most favored of the elective state jobs. The salary is the same as that of all the other state officers, \$5,000 a year—the governor alone excepted, he drawing \$7,500, a mansion maintained at public expense, and the services of a butler. In addition the railway commissionership is for a term of six years, all other state officers being in for a term of two years. The state superintendent, nonpartisan, has a 4-year term. That will serve to explain why there are always more candidates for the commission, two or three times over, than there are for all the other state offices combined. Seven Democrats competed for the commission nomination this year, and eighteen Republicans fought it out. I ran second in the Democratic primary, which is about as comforting as holding the second best hand in a jack pot.

Despite the fact that the railway commission, in its actual contact with the public, is the most important office in the state, it is the least known and least appreciated of them all. It is the last state office on the official ballot, and the vote for commissioner is usually about 35 per cent less than the vote for governor or United States

Senator. The commission is always the target for legislators to shoot at, every session seeing an effort either to abolish it or curtail its functions. If neither of these succeeds, and so far they have not, recourse is taken to crippling it by inadequate appropriations. There have been three sessions of the unicameral legislature since I took office, and during those sessions not one of the legislators opposed to the commission has ever visited the commission office or tried to ascertain the facts about its work and the results. The less a legislator knows about the commission the fiercer his opposition to it. Those who know the most about its work and the results obtained are always its supporters. Unfortunately the ratio of the informed is about one in one hundred.

A SMALL independent telephone company is struggling along, failing to pay dividends, and barely making expenses, and is serving perhaps two hundred patrons. The patrons think their rate is too high and apply to the commission for a reduction. With a full knowledge of the facts from the record, the commission finds that a reduction would practically put the company out of business, and the application for a reduced rate is denied. Result: A dozen stockholders pleased and two hundred patrons offended. Contrawise, an independent telephone company that is unable to set aside a depreciation reserve, unable properly to maintain its lines, and constantly losing money at its established rate, makes application for a slight increase. With a full knowledge of the facts the commission grants the increase. Result: Same old thing!



Importance of Railway Commission Office

“DESPITE the fact that the railway commission, in its actual contact with the public, is the most important office in the state, it is the least known and least appreciated of them all. It is the last state office on the official ballot, and the vote for commissioner is usually about 35 per cent less than the vote for governor or United States Senator.”

That is what every regulatory commission is up against. And it, too, is up against that too common belief on the part of many that any man who has a dollar invested in a public utility is an enemy of the public, if not a thief and a robber. By and large, a public utility commissioner's job is about as thankless as any activity can be. Just damned if you do and damned if you don't. It would be easy, and perhaps politically profitable, to cater to the public, but the commissioner who so acted wouldn't be worth much. A governor can build a political machine by his patronage, but patronage is something the utility commission does not possess. Aside from a few stenographers, most of the force must consist of experts along certain lines—rates, engineering, accounting, reporting, etc. These experts cannot be found at every corner or crossroads. But try to explain that fact to the applicants whose sole recommendation is that they voted for you!

THOSE favored by a decision take it for granted that they received only simple justice, and forget it; those decided against—well, you have one guess as to what they think, and do, at the next primary.

The Nebraska State Railway Commission was established in 1907 by constitutional amendment. While given jurisdiction over common carriers, its chief duty was confined to railroad regulation. From time to time added duties were imposed upon it until now it has 300 per cent more than it had during the first decade of its existence, but in the meantime its appropriation has been reduced gradually and more employees have had to be added. Its duties have grown to be threefold—executive, legislative, and judicial. It can make its own laws about regulation unless the legislature has previously spoken. For instance, if the legislature has not provided that a locomotive must give two long and one short warning at a crossing, the commission can

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order three short and one long warning. Neither the legislature nor the commission has taken action on locomotive whistles. But either one can. The commission has the same functions as a district court except only that it cannot impose fines or punish for contempt. It can act judicially by suspending or vacating its orders, after investigation, for failure to comply. It can, upon proper showing, pardon the violator of its rules and regulations, something even the governor cannot do in case of conviction of violation of the law.

BUT ask the first wayfaring Nebraskan you meet what he knows about the duties and responsibilities of a member of the commission and nine times in ten the answer will be either a vacant stare or a cursing of the commission because it is "a tool of the corporations." If your hide is thick, the work of a commissioner will be, on the whole, enjoyable; if not, then you are on a hot seat. Fortunately for myself, my hide is above the average in thickness. Fifty years in the newspaper game has served to toughen it. The commissioner who performs his duty as he sees it, mindful of his oath and of the laws governing his office, will get soul satisfaction and his salary out of it, but that is about all. He will seldom get any plaudits from the public.

Am I sore and downcast because of my defeat? Not a bit! On the contrary, I welcome retirement to private life. After two years of service on the commission I would have resigned to accept a newspaper position at three-fifths of the salary and a contract for four years. I have no offer or contract

now, but I can buy a newspaper of my own, and probably will. Politically, my head may be a bit bloody, but, b'gosh, it is still unbowed. What a joy it will be once more to be able to pay my respects to certain political leaders and those ignorant of the duties of a public official!

I LOST some union labor votes, although a member of a trades union for more than half a century, because of my decisions in what are known as station-closing cases. A railroad makes application to dispense with an agent-operator at a station and substitute the services of a custodian. The reason given is the failure of the station to produce enough revenue to warrant the present service. Many such applications I denied; many I granted. I received no credit from the railroad unionists for the denials, but I certainly received Merry Hell from them because of those I granted. I take great satisfaction from the fact that of the scores I granted only one complaint of the service was received by the commission, and in that one instance the original service was immediately restored.

And, again, I doubtless lost some votes because there are those who maintain that a job as commissioner is merely a stepping stone to a good or better job with some public utility. That is a charge made by some member of the legislature at every session. They assert that no sooner is a commissioner defeated for reelection than he is grabbed up by some big public utility. It is not true. I could make that statement in more emphatic language. Nineteen men have been elected or appointed commissioner in Nebraska. Of

Q "By and large, the office of railway commissioner in Nebraska is the most favored of the elective state jobs. The salary is the same as that of all the other state officers, \$5,000 a year—the governor alone excepted, he drawing \$7,500, a mansion maintained at public expense, and the services of a butler. In addition, the railway commissionership is for a term of six years, all other state officers being in for a term of two years."



the nineteen two have gone from the commission to positions with public utilities. One became connected with a chamber of commerce, and later was employed by the electric utilities. One of the two mentioned was Harry G. Taylor, who became connected with the railroad association in an executive capacity. The record shows that Taylor was one of the most efficient and highest regarded by press and public of them all. I suppose those who make that ridiculous claim really believe that a commissioner, when defeated, should dig a hole and crawl into it. Certain it is that when I retire from the commission I will not be snapped up by some public utility. They are not taking on men of my age. My age is of no particular concern to anybody but myself, and I am not worrying about it. But old as I am I honestly believe that I can be of better service to the public as commissioner, after six years of experience, than a younger man who has to begin at the bottom and learn. However, the public did not seem to agree with me.

PERHAPS another reason for my defeat is the fact that names count for a lot when election day rolls around. There are more voters of Scandinavian birth or descent in Nebraska than any

other nationality. We have a Johnson in the offices of lieutenant governor, auditor, and attorney general, a Swanson on the commission and in the office of secretary of state. I was defeated by a Democrat named Swanson, and his Republican opponent is a Larsen. Nebraska has a large Bohemian and German population, either by birth or descent. No Bohemian or German of birth or descent has ever been elected to state office so far as I have been able to ascertain. You can figure it out for yourself.

I have given several possible reasons for my defeat, but the only discernible reason is that I did not get enough votes. But let me say in conclusion that I am satisfied with my record, and that is enough. I would not, upon the evidence presented before me, change a single decision I have rendered. Like good old Bill Klem, the baseball umpire, I called them as I saw them, and walked away tough. Personalities and partisanship never influenced me in the least degree. Neither did partisanship enter into any of my appointments, although I confess that, all things being equal, I favored the Democratic applicant. But the one I deemed best fitted for the job received my vote, politics notwithstanding. As an afterthought, perhaps that position

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cost me a few votes. I dunno! Notwithstanding the fact that for six years the commission has had a Democratic majority, the best paying job is held by a Republican, the next best by a Democrat, and the third best by a Republican. Of the thirty-six commission employees I could not tell you the party affiliation of more than eight or ten. In fact I have never given a darn, just so the employee performed his job to the satisfaction of the commission.

WELL, "We who are about to die," offer you a bit of advice. That is the easiest thing in the world to give, and the hardest to accept. Play politics, regardless of the law and the evidence, and maybe you will succeed; do your duty as you see it, mindful of the law

and the evidence, and you will have a lot of soul satisfaction and darned little else. As a commissioner I will have drawn \$30,000 from the tax-paying public, and spent practically all of it. But I have something left worth far more than money—the satisfaction of having performed my duty as I saw it, kept inviolate my oath of office, and retiring with the respect of those who regard these things more highly than money. Whether I am ever again a candidate for public office remains on the knees of the gods. Once it gets into your blood it has the same effect as printer's ink on your fingers. I have been exposed to both.

Hail and farewell! Two years from now it may be "Hello, here comes that Fuller brush man again!"



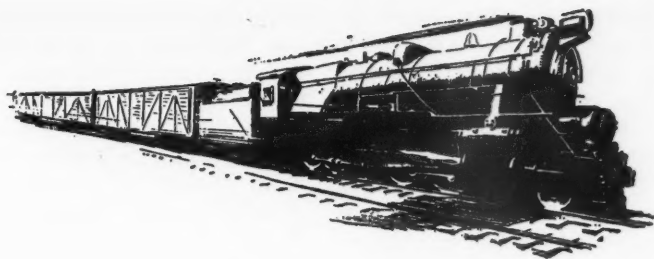
Business versus Government

"I WONDER if business is wise when it proposes a frontal attack on government. Who is going to make that attack, big business or small business, and who is to determine the direction? What is the reaction of the public when it sees business fighting government? . . .

"Would it not be the part of wisdom for business to begin at home to clean house so thoroughly that there would be no dirt for government to dig up; by its record of performance to win back the confidence of the public that the American way is the desirable way, that the system of free enterprise and business for profit is the system we want, because it offers the most for us, the American people?"

—W. L. BATT,

Chairman of the Board, American Management Association.



The 1940 Transportation Act And the Railroad Problem

This new statute has, in the opinion of the author, some possibilities in meeting the fundamental problems of competition but can hardly be said either to restore equality of opportunity for competition or to substitute an aggressive monopoly policy. One must conclude, he declares, that the new law is far short of an adequate piece of transportation legislation.

By HAROLD D. KOONTZ

EVER since the depression following upon 1929 dealt so roughly with the transportation industry in general and the railroads in particular, various groups of experts have studied the problems of the industry and have made recommendations for new transportation legislation. It is well known that the public interest in new regulation stemmed largely from concern for the critical condition of the railroad industry. With its billions of dollars of securities held by the public and for the public in the portfolios of banks, insurance companies, and other institutions, with its importance to national prosperity, and with its significance to the efficient functioning of the economic machinery of the nation, the railroad industry was believed to need strong legislative treatment.

The result of these years of study

and of the undeniably strong public interest in a healthy transport system is the Transportation Act of 1940 which finally became law in September. The approval of this law by the President a few weeks ago culminated a legislative history of several years in which extended hearings were held and much congressional labor expended, and during which the bill seemed to be on its deathbed on many occasions.

To those interested in the present and future of the railroads, the law is more than just another transportation act. It represents the earnest work of legislators who have had at their command numerous recommendations and studies and who have been pressed to action by the unsatisfactory condition of the railroads. The law is of great importance as a general transportation measure, and should be viewed in part

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in the light of its effects upon the transportation situation. But the predominant need for sound legislation which might enable railroads to return to financial health makes the public interest in the act revolve largely around its possible effects upon the railroad problem.

FOR some years, the railroads have maintained that they do not need subsidies from the Federal government in order to carry on transportation for peace-time requirements and for national defense. The railroads have claimed that all they need is an equality of opportunity in the transport field and the removal of governmental impediments to efficient operation of the business. This request strikes a note of sympathy in a day filled with requests for financial bounties from government. But the request is also crucial. If it is granted and the railroads still cannot maintain themselves in financial health and operating efficiency, then the public interest in transportation would seem to demand a governmental policy looking toward public ownership in some form or other. Clearly, those persons interested in the railroad problem must look at the act from the point of view of the extent to which it restores an equality of opportunity in the transportation field.

What the Transportation Act Does

THE Transportation Act of 1940 has made a great many changes in the interstate commerce law of the land. Some of these changes are of trivial significance and affect only procedures or the detailed scope of certain sections of regulation. Other modifications have been introduced which will

surely affect the course of transportation regulation materially and which may be expected to influence the future of railroad prosperity. It is with these more important measures that we are concerned here.

1. A new *transportation policy*. The new act causes to be placed at the head of the revised Interstate Commerce Act a grand statement of *national* transportation policy which is to be adhered to by the Interstate Commerce Commission in administering the law. By this national policy, all forms of transport are to be regulated fairly and impartially so as to recognize the inherent advantages of each, to foster sound economic conditions in each, to develop reasonable and non-discriminatory rates, and to encourage fair wages and equitable working conditions. All this regulation is to be expressly carried out to the end of developing, coördinating, and preserving a national system of transportation.

This statement of policy is the first in which Congress has definitely demanded a comprehensive approach to the regulation of transportation. The policy is refreshing and it is admirable. It inspires the hope that Congress may at last be willing to see and treat the transportation problem as a whole. But the good intentions of the policy are belied by omissions of the act as well as by matters found in the act. The law does not touch upon subsidies to water and other carriers. The act does not mention the Inland Waterways Corporation or other cases of Federal waterway subsidies, nor does the law state that it is the policy of Congress either to make transport agencies pay their way or to have their subsidies

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justified by the compelling needs of national defense.

quate transportation situation developed.

As will be noted presently, the new law leaves a large part of the water carrier business unregulated. Private carriers in both water and motor transport are still left virtually untouched. The law specifically bolsters earlier provisions forbidding the Interstate Commerce Commission to regulate intrastate motor vehicle business, even where that business affects interstate transport, and extends this restriction to administration of water carrier regulation. As is well known, the Interstate Commerce Commission found long ago that effective regulation of interstate railroad transportation required control over intrastate operations which burdened interstate commerce. Moreover, in the provisions amending the law in regard to the setting of rates and the removal of discriminations, the new statute seems definitely to order the Interstate Commerce Commission to act in the interests of the given type of transport.

In the face of these additions and omissions, can the new policy mean much more than a pious hope? It may have more meaning, but no regulatory commission can be expected to do its utmost so that coördination will be fostered or the most efficient and ade-

2. *REGULATION of domestic water carriers.* Perhaps the most important concrete contribution of the new transportation act is the introduction of regulation of domestic water carriers. Until now, water carrier regulation has been chaotic. Joint water-rail operations were under the control of the Interstate Commerce Commission. Except where this jurisdiction conflicted, the Maritime Commission had control over interstate and foreign common carriers in oceanic, coastwise, intercoastal, and Great Lakes traffic, as well as contract carriers in the intercoastal trade. Even these controls were generally inadequate and often laxly applied. Moreover, before this last September, the Federal government made no attempt to regulate the economic affairs of intrastate water carriers, interstate inland water carriers except upon the Great Lakes, any of the private water carriers, and contract carriers beyond those in the intercoastal trade.

By the present law interstate inland, intercoastal, and coastwise water carriers are placed under the jurisdiction of the Interstate Commerce Commission. Numerous exemptions are made from the law, however. Local and



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small water carrier operations in interstate commerce are excepted. Contract water carriers who do not compete "actually and substantially" with other types of regulated transport agencies are placed outside the law. Private carriers or those carriers transporting property solely of the person owning them are exempted from regulation. Even common carriers which transport goods in bulk in cargo space used for not more than three such commodities are freed from regulation under the law. Furthermore, the act explicitly forbids the commission to regulate the rates or services of any intrastate carrier, even where advisable to remove discriminations against interstate commerce.

THESE exemptions are worth noting. Bulk carriers predominate in the domestic water carrier business. Oil, grain, ore, coal, lumber, and other products carried in large volume by water carriers are almost entirely transported by bulk carriers. All these would be exempt under the law. An important part of the inland water commerce travels over the New York barge canal, and the new act seems effectively to omit this. Much water traffic is also handled by private carriers or by companies owned by them and transporting exclusively the products of their owners. This traffic would be excluded. It is impossible to estimate the exact proportion of domestic water carrier business which is outside the new law. The proportion is surely far more than half, and practically all the exempt traffic does compete with other carriers, especially the railroads.

For the carriers to which it applies,
DEC. 5, 1940

the water carrier regulation is fairly thorough. Rates, routes, and service of common carriers are regulated almost to the degree found in railroad control. The commission is empowered to fix the maximum or minimum rate and to remove discriminations against persons, places, and kinds of traffic. Rates of contract carriers are regulated in much the same way as with contract motor carriers. The commission is given a power to require reasonable minimum rates of contract carriers with a view to fostering a sound national transportation system and to removing unwarranted rate discriminations against the charges of common carriers by water.

COMMON carriers are required to obtain certificates of convenience and necessity before entering into service and contract carriers must obtain permits for operation. Certificates are to be issued by the commission when it finds the applicant "fit, willing, and able," and that the service is required by the present or future public convenience or necessity. To obtain a contract carriage permit, the applicant must not only prove his fitness but the service must be consistent with the public interest and the law's new national transportation policy. However, a "grandfather" clause has been written in to protect all carriers in operation on January 1, 1940, with allowances for seasonal suspensions, and these carriers automatically qualify for certificates or permits.

Also found in the water carrier law are accounting regulations as broad and strict as those imposed upon railroads, but special security issuance control is lacking. The long-and-short-



Safeguards against Unifications

"FOR the last few years, the Interstate Commerce Commission has taken upon itself to require consolidating railroad companies to care for employees displaced by the unification. The commission has often felt that the public interest demanded such safeguards to employees in spite of the already existing agreement between railroad management and labor by which dismissal allowances equal to 60 per cent of full pay are paid for periods from six to sixty months, depending upon the service of employees."

haul clause, long applicable to railroads, is extended to common carriers by water covered by the law. As compared to railroad regulation, under which the Interstate Commerce Commission can become the practical dictator of railroad car service, the control over routing and handling of water carrier equipment is relatively incomplete. Combination of water carriers by pools, mergers, acquisitions of control, or other means, however, is placed under the same general kind of control as is applied to the railroads.

3. WIDER regulatory powers over combination. There are many students of the transportation problem who have believed that efficient combination of transport agencies would not only lower costs but improve service. Regulation of common carriers in particular has been based upon the assumption that these carriers tend to be

monopolies and that the public interest demands strict control over rates, service, and financial practices. At the same time, regulation has placed obstacles in the way of efficient combination whereby the economies of monopolies or near-monopolies might be realized. It was hoped by many experts that a new transportation act would recognize the economic advisability of reducing duplication of transportation facilities, while at the same time protecting the public from monopolistic abuses by the already well-developed system of regulation.

Has the law encouraged efficient combination? Has the law made combination easier? The law does have some significant provisions respecting combinations. It extends the power of the Interstate Commerce Commission over combinations. It relaxes the strict provisions of the law of 1920 under which railroad consolidation was

to extend according to a fixed plan. But the act creates new statutory hindrances to the consummation of combinations.

The regulation of combinations is applied to all common carriers by rail-road, highway, or water, under the jurisdiction of the Interstate Commerce Commission. These carriers may not enter any kind of combination, whether a mere pooling agreement or an outright merger, without commission approval. Nor is any noncarrier holding company or other person permitted to make such combination without approval. Thus, the combination provisions are broadened to include all three types of transport agencies as well as to embrace any kind of combination device including the acquisition of control by any person through the ownership of stock. In addition to certain special requirements, to be mentioned presently, the law requires that commission permission for combination be given only if it is consistent with the public interest and will not unduly restrain competition.

THESE provisions make no mention of combinations proceeding according to plan thereby causing the end of the grandiose consolidation scheme of the nineteen twenties. They apparently leave unifications to the commission to allow or disallow in accordance with the public interest. However, examination of the law discloses that the commission effectively has its hands tied in many ways, even if it were disposed to encourage the development of economically strong and efficient systems of transportation. In the first place, the act still rides two horses. The legislature clearly wants

to encourage economical combination, but it wants no combination which might spoil competition. The writer questions whether competition is needed to protect the public, in view of the advanced status of regulation, and he also doubts that efficient transportation units can be developed along competitive lines, especially when rate, service, and other regulation is considered and the lack of equality of opportunity in the transportation field noted.

A second impediment to commission approval of combinations upon purely economic considerations is the insistence by the law that unifications, mergers, or acquisitions of control of railroads and motor carriers may not be approved unless consistent with the public interest, not unduly restrictive of competition, and promotive of better public service. Apparently, the law means that rail and motor carriers may not consolidate merely because it may be economical to do so, but that the consolidation must enable either or both carriers to serve the public to better advantage. One must admit, however, that this test has been applied administratively by the Interstate Commerce Commission before the present law.

A third obstacle results from the law requiring that the commission, in approving unifications, mergers, or acquisitions of control involving railroads, give weight to the following considerations, among others:

- (1) The effect of the proposed transaction upon adequate transportation service;
- (2) The effect upon the public interest of the inclusion, or *failure* to include, other railroads in the territory involved;

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(3) the total fixed charges resulting from the proposed transaction; and

(4) the interest of the carrier employees affected.

Most of these provisions existed in the law before 1940 and can hardly be thought of as new impediments, although the power of the commission apparently to require inclusion of certain carriers in a plan as condition for approval of the plan smacks of the planned consolidation approach of the supposedly superseded act of 1920. However, the real newcomer to legislation is the requirement that the interest of carrier employees affected be considered.

FOR the last few years, the Interstate Commerce Commission has taken upon itself to require consolidating railroad companies to care for employees displaced by the unification. The commission has often felt that the public interest demanded such safeguards to employees in spite of the already existing agreement between railroad management and labor by which dismissal allowances equal to 60 per cent of full pay are paid for periods from six to sixty months, depending upon the service of employees. In addition to these safeguards against unifications displacing railroad labor, the

present law adds another. By direct legislative declaration, the Transportation Act of 1940 requires that the Interstate Commerce Commission insist upon a fair and equitable arrangement to protect the interests of railroad employees affected by a unification plan. But this is not all. The new law specifically states that the commission shall include, as a condition for approval of unification, terms and conditions providing that, for four years following the approval of a plan, no railroad worker may be placed in a worse position in respect to his employment. In the case of workers who have been employed for less than four years, the protection is to continue only for a period after the commission order equivalent to this employment.

What does this labor provision do? First of all, it writes into the law an outright declaration that coördinations, consolidations, and acquisitions of control are not to be undertaken unless any labor so displaced is taken care of. But, the law goes farther and holds that a displaced worker may not be put in worse position. As this provision must be interpreted, it means that for four years railroad workers must be paid full wages, if they are displaced by a plan to combine for more efficient operation. Such a provision will nec-



Q "THE much debated long-and-short-haul clause is slightly modified by the new [transportation] law. The troublesome equidistant clause, by which low long-haul rates could not be made over a circuitous route unless points of equal mileage to the direct route on the circuitous route received similar low rates, has been repealed. But, since the equidistant clause added little of importance to the law and since the other limitations on competitive long-haul rates are left untouched, the modification has practically no significance."

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essarily place a brake upon effective and economical combination and the elimination of wasteful duplication of facilities. Furthermore, the 4-year period represents a legislative compromise and, because it does, no railroad manager can know whether in four years he will be relieved of the responsibility of paying unneeded workers.

4. *BROADER controls over management.* The student of regulation finds interest and significance in the broader controls over management instituted by the Transportation Act of 1940. In several parts of the new law there are provisions giving the Interstate Commerce Commission power to inquire into the management of railroads, motor carriers, and water carriers. The commission is directed to investigate the manner of conducting business and the practices of management and others who may directly or indirectly control the business. The close investigation of management implies a sort of supervision of management, for the weapons of investigation and publicity and elementary tools of control. Moreover, the law directs the commission to transmit recommendations to Congress for additional legislation which such investigation leads the commission to believe to be necessary. These provisions of the law may seem innocuous, but they appear to represent the beginning of the end of any attempt to distinguish between the spheres of managerial discretion and regulation in government control of transportation.

5. *SLIGHT modifications of the long-and-short-haul clause.* The much

debated long-and-short-haul clause is slightly modified by the new law. The troublesome equidistant clause by which low long-haul rates could not be made over a circuitous route unless points of equal mileage to the direct route on the circuitous route received similar low rates, has been repealed. But, since the equidistant clause added little of importance to the law and since the other limitations on competitive long-haul rates are left untouched, the modification has practically no significance. To be sure, the new law, by allowing tariffs to become effective one day after a long-and-short-haul rate is permitted to be filed, does expedite the fixing of such rates.

6. *A SPECIAL investigation board.* One of the most hopeful aspects of the new law is the section creating a board to investigate certain economic matters of the various modes of transportation.

This board, which is to be composed of three members appointed by the President, is directed to investigate the following:

(1) The relative economy and fitness of carriers by rail, highway, or water to carry each type of traffic and the methods by which each type should be developed so as to obtain a sound national transportation system;

(2) The extent to which right of way or other transportation facilities have been and are being financed from public funds;

(3) The extent to which taxes are imposed upon such carriers by the various taxing authorities of the nation; and

(4) Any other matter which the board deems to be important for the improvement of transportation conditions.

Special Investigation Board

“ONE of the most hopeful aspects of the new law is the section creating a board to investigate certain economic matters of the various modes of transportation. . . . The board is directed to report the results of its studies to Congress and the President from time to time and to make recommendations, with the first report due by May 1, 1941.”



THE board is directed to report the results of its studies to Congress and the President and to make recommendations, with the first report due by May 1, 1941. The board is created for a period of two years, with power given to the President to extend its life for two more years.

The board may represent the beginning of serious and expert study of transportation problems by a special agency charged with no other duty than to investigate, report upon, and recommend needed legislation for a sound transportation system. It may become a body to carry on and augment the excellent research done by the Federal Coördinator of Transportation. Or the board may become another agency which will study the needs of transportation policy and make recommendations, only to have them fall upon deaf congressional ears. It is too early to say whether the high purposes of the board will be transformed into legislative action designed to improve government control policies in transportation. What one can say, at least, is that the creation of the board represents a disposition on the part of Congress to continue to study the legislative needs of transportation.

7. REPEAL of land-grant rates. The Transportation Act of 1940 effects a partial repeal of the special rates obtained by government for transport of government business on land-grant railroads. With the exception of the transportation of military or naval property or persons for military or naval purposes, the government will henceforth pay the full rates to railroads which had received land grants. In return for this full rate, all land-grant railroads are required to release the government from any claims they may have for lands granted but not transferred.

The repeal of the land-grant rates has far more publicity value than real value. For the railroads as a whole, the repeal may cause government payments to rise by five to eight million dollars. For some railroads, this increased revenue may be important, but for the railroads in general it cannot be regarded as very significant.

8. ADDITIONAL loans. The usual palliative, government loans, is found in the new transportation law. The Reconstruction Finance Corporation is authorized to make loans, guaranties, and purchases of an amount

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equal to \$500,000,000 in addition to the loans and commitments made prior to January 31, 1935, and the renewals of these obligations made since. Thus, the lending power of the Reconstruction Finance Corporation in railroad loans is practically doubled. The power of the corporation to lend to railroads in receivership or trusteeship is liberalized, and the corporation may now purchase securities of such companies or make loans upon ample security. The corporation is also authorized to assist in refunding, consolidation, maintenance, or construction by purchasing obligations of railroads or by making direct loans. The loan provisions speak for themselves. In view of the financial condition of certain railroads and the need for financial assistance at reasonable credit terms, additional government loans may be perfectly justifiable. But it should be recognized that government loans are no solution to the transportation problem and merely tend to postpone days of reckoning.

What the New Transportation Act Does Not Do

THE new law represents the deliberations of Congress for several years. Congress has had the benefit of studies of the Federal Coordinator of Transportation, a report of a committee of three Interstate Commerce Commissioners, a report of a committee of six railroad management and labor executives, studies of savings banks and insurance companies, and numerous other studies made in the last ten years. The framers of the new transportation law had perhaps more information and recommendations at their disposal than any other previous group writing a

transportation law. One might have expected a monumental law dealing broadly and thoroughly with the transportation situation. Instead, one has a patchwork law, with some things to commend it and others which do not seem wise, and a law which was probably lucky to be passed at all.

In view of the pressing need for a sound and efficient national transportation system and the fact that private ownership seems everywhere to be on the defensive, the needed legislative reforms left undone by the law are of importance. The law does contribute many improvements in transportation regulatory policy and these should be recognized. The statement of transportation policy applicable to regulation of all forms of transportation is admirable. The extension of regulation with a fair degree of consistency over a larger number of water carriers must necessarily be approved as a part of an accepted system of transportation regulation. The measures taken to facilitate transportation combinations are to be commended as is the creation of a fact-finding board to study some of the more pressing legislative needs for efficient transportation.

BUT in all these commendable provisions, Congress has not done what the present chaotic situation seems to demand. The declaration of national policy to treat all forms of transportation fairly, impartially, and from the point of view of a national transportation system has not been followed out in the law. Differences in regulation are not completely ironed out; not all carriers are placed under regulation equally; and the question of subsidies is left untouched. The regulation of

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water carriers omits a considerable part of this kind of transportation business which is competitive to other forms. The new combination provisions maintain obstacles to efficient combination by insistence upon competition and by making it difficult for railways and other kinds of carriers to combine. Another obstacle to sound railroad unification is frozen into the law by the provision not allowing displacement of labor. As important as the caring for labor displaced by efficiency and progress may be as social policy, it hardly seems fair or wise to burden a single industry which is in none too good financial health with such a provision.

The act does not take a positive and effective stand for impartial and complete regulation. It does not open the way for efficient combinations. It does not provide for increasing the sphere of managerial control of rates, so that inadequate rates can be made the responsibility of management, rather than the Interstate Commerce Commission. The law does not touch the field of labor regulation by making it clear that labor is as much dedicated to the public interest as capital and providing for regulation of labor disputes by the same body which controls other economic matters affecting transportation. The promotion of transportation facilities by government expenditures

is not tied to regulation and the solution of the transportation problem, although the new investigation board leaves the way open for further study of the problem.

Will the Transportation Act of 1940 Help the Railways?

WHAT the rate-paying and investing public is interested in most is whether the new Transportation Act of 1940 will help the railways. There is little in the law that would indicate much help. The regulation of water carriers will tend somewhat to stabilize water and rail rates, with consequent benefits to railroads. So much of the traffic competitive to railroads is not regulated by the law, however, that any such benefits will be exceedingly small. Likewise, the combination provisions, although liberalized by the repeal of consolidation according to preconceived plan, are hedged about with other obstacles. One can hardly expect much improvement of railroad earning capacity or service to come from combinations. The increase in rates paid by the government to land-grant railroads represents a definite aid to the railroads, but one which is not very significant. In like manner the liberalization of Reconstruction Finance Corporation loans may aid some railroads to reorganize or avoid bankruptcy, but such aid can hardly be ex-



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pected to make any lasting contribution to the solution of the railroad problem.

The effects of improved business and expenditures for the defense program are already showing in bettered railroad earnings. These earnings, however, are still by and large far behind those of other industries. The railroad industry is far from financially well in the present period of relative prosperity. In other words, the return of a measure of prosperity to businesses generally still leaves the railroads in financial difficulty and is compelling evidence that the railroad problem is more than a general depression problem. As is well recognized, the greatest difficulty which the railroads face is competition, both among themselves and with other forms of transport.

THE competitive situation is indicated by the fact that had the railroads moved the same proportion of total traffic in 1939 that they moved in 1930, freight revenues would have been \$65,000,000 more in 1939 than in 1930 instead of some \$830,000,000 less. Even this picture does not adequately tell the story of reduced rates, especially on high traffic value commodities, due to competition. A large part of this competitive disadvantage is due to the cost and service advantages of water and highway carriers. But some of the competitive disadvantages of the railroads may be traced to less strict regulation of competitors, probable subsidies by government of

competitors, and burdensome regulations placed upon railroads.

There is a rather curious irony in the fact that competition has such serious consequences for the railroads. The ability of the railroads to meet competition has been largely hampered by regulations over rates and service which were designed to keep the railroads from being monopolies. Many government expenditures for waterways and highways have been stimulated by a desire to make the people free from the ogre of railroad monopoly.

The fundamental problem seems to lie in the clash between the public desire for competition and the desire to regulate railroads as though they were monopolies. We excuse such regulation as being necessary for fairness and for the promotion of efficient and coördinated transportation service. Yet we fail to allow railroad companies to combine along economical lines. And, as for allowing railroads to compete far more freely, so that the most efficient may prosper and survive, no serious person has dared advocate anything so inconsistent with "public interest."

The new transportation act has some possibilities in meeting the fundamental problems of competition. But it can hardly be said that the act either restores equality of opportunity for competition or substitutes an aggressive monopoly policy. One must conclude that the new law is far short of an adequate piece of transportation legislation.



Wire and Wireless Communication

LEGAL observers in Washington circles are beginning to see a new threat to a substantial jurisdictional area now thought to be safely under the statutory control of the state commissions. The new theory has been promoted to some extent by a recent controversy before the Federal Communications Commission as to its jurisdiction over telephone exchange service in cities with a metropolitan area spilling over state lines.

Some time ago the Southwestern Bell Telephone Company decided to enlarge its Kansas City exchange area to include several suburban stations in an adjoining state which had previously been served on a toll basis. The company assumed that § 221 (b) of the Communications Act (which expressly prohibits the commission from exercising jurisdiction over local exchange facilities, "even though a portion of such exchange service constitutes interstate or foreign communication") made it unnecessary to file revised tariffs concerning the enlarged Kansas City set-up.

The FCC legal division took a contrary view and in a proposed report the commission several weeks ago decided that no telephone company by its own act (and by merely changing a label, so to speak, on its exchange arrangement) could deprive the Federal board of jurisdiction which it previously exercised.

OF course, the Kansas City Case is complicated to some extent by the question of whether the new margin of interstate exchange operation would be

subject to effective state commission regulation as a matter of fact. Section 221 (b) gives the exemption from FCC jurisdiction only in cases "where such matters are subject to regulation by a state commission or by local government authority." Again, the Kansas City Case presented a rather narrow legal question of whether such statutory exemption could be invoked in situations where, previously, Federal jurisdiction had already been attached.

But subsequent discussion has evolved a broader challenge to the validity of the statutory exemption itself. It appears that this statutory exemption in § 221 (b) was incorporated in the Federal Communications Act at the instance of the National Association of Railroad and Utilities Commissioners (just as somewhat analogous anti-Shreveport clauses were inserted in the Federal Power Act and in the Natural Gas Act). The clause was apparently based upon the decision of the United States Supreme Court in *Pennsylvania Gas Company v. Public Service Commission*, 252 US 23, decided in 1920 (PUR 1920E, 18).

Congress, as well as the association, apparently relied upon the *Pennsylvania Gas Case* and the Supreme Court holding therein to the effect that states could regulate certain interstate service in the absence of Federal legislation on the subject.

It may be recalled that the facts in the *Pennsylvania Gas Case* revealed a jurisdictional problem with respect to local gas distribution somewhat similar

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to that of a local telephone exchange area spilling over state lines. The location of the border-line dispute in that case was the area around Jamestown, New York, and adjacent Pennsylvania.

HOWEVER, it now appears that the Supreme Court has been shifting its ground and the question arises as to whether the constitutional foundation for § 221 (b) of the Communications Act has not been undermined. In 1930 the Supreme Court in *East Ohio Gas Co. v. Tax Commission*, 283 US 465, stated:

... It does not appear that there was presented in *Pennsylvania Gas Co. v. Public Service Commission*, to the state court or here, the considerations on which it is held that interstate commerce ends and intrastate business begins when gas flowing through pipe lines from outside the state passes into local distribution systems for delivery to consumers in the municipalities served. But, however that may be, the opinion in that case must be disapproved to the extent that it is in conflict with our decision here.

In other words, the court apparently concluded that while the result reached in the *Pennsylvania Case* was correct, the theory upon which it was predicated was wrong.

The Supreme Court was willing to go along with the idea that state commission jurisdiction might attach to local distribution of natural gas at the point where it passed out of the main interstate pipe line. This might be compared to the old constitutional doctrine of "breaking the bulk" upon which the court has held that an interstate shipment, once broken up into small packages, ceases to become interstate and accordingly becomes subject to local regulation.

The court has in other cases seemingly rejected the proposition that the state may regulate charges for interstate utility service. *Wabash Railroad v. Illinois*, 118 US 557; *Covington Bridge v. Kentucky*, 154 US 204. The same view was taken with respect to gas and electric service in the *Landon Case*, 249 US 236, and the *Attleboro Case*, 373 US 83, respectively.

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So it is not at all certain that, if § 221 (b) were placed squarely before the court upon a constitutional challenge, the Supreme Court would be willing to waive superior Federal jurisdiction over local distribution which is not itself inherently intrastate commerce. Consequently, Federal attorneys are wondering whether the partial overruling of the theory of the *Pennsylvania Gas Case* by the Supreme Court does not dissolve the underlying authority for the statutory proposition that a state may regulate the rates for interstate operations whether they concern gas, electricity, transport, or communications.

In support of a challenge as to the validity of § 221 (b), advocates of an extension of Federal authority into border-line jurisdiction of local utility operations point out that the present anti-Shreveport exemptions leave an unsatisfactory jurisdictional situation. For example, if a telephone exchange should overlap the boundary between Maryland and Virginia, it would be possible for the Maryland commission to fix a rate for Maryland subscribers quite different from the rate fixed by the Virginia commission for Virginia subscribers. Yet both rates would be for essentially the same service through the same exchange facilities. Federal jurisdiction, on the other hand, would insure uniformity at the border-line cities.

Similar discrepancies are possible with respect to valuation for rate making or other purposes as between the Virginia and Maryland commissions in the hypothetical case above mentioned. Again, there is doubt concerning the authority of the commission of one state to enter upon the valuation proceedings concerning utility property situated in another state, even though an integral part of a common utility system. And what would happen (in the theoretical situation) where the commission of one state ordered the utility to extend service from a point in the adjoining state and the commission in the latter state directed the utility not to extend such service.

Maybe these hypothetical difficulties are more theoretical than plausible.

WIRE AND WIRELESS COMMUNICATION

And certainly, resolving this line of legal reasoning to its extreme conclusion would mean that anti-Shreveport clauses in all the Federal regulatory statutes are of doubtful value, to say the least. Further than that, it would seem to foreshadow a general "moving in" by the FCC and the FPC on all "border city" systems of utility regulation.

TAKING a contrary view, the results of such Federal invasion might be more chaotic than the hypothetical difficulties outlined above. In the District of Columbia, for example, the electric company has distribution lines which spill over into neighboring Maryland. The same is true of the telephone company in the District of Columbia.

The commissions of Maryland, the District of Columbia, and Virginia have always worked together on these border-line situations without any apparent friction. Usually the District of Columbia Public Utilities Commission has taken the lead in fixing the main rate structure for the city of Washington and other state commissions have confirmed the result as to the margin of overlapping operations.

It is not certain that if the FCC and the FPC were to take control of such situations—apparently on the theory that the interstate tail should wag the intrastate dog—that the regulatory result would be equally without friction. Furthermore, on the score of uniformity there is another hypothetical question of a Federal commission fixing rates, passing upon rates, valuation, and service questions for a border-line unit of a statewide system in such a manner as to be utterly at variance with the results achieved by the state commission with respect to the balance of the statewide utility system.

In any event, it is an interesting legal question which is bound to command more legal attention and vigorous discussion in the near future.

* * * *

DEVELOPMENT of television to a workable unified system is being speeded

by an aggregate of \$8,000,000 which has been budgeted for that purpose by some two score individuals and firms which, to date, have been authorized by the Federal Communications Commission to engage in such practical research and experimentation on a nation-wide basis.

Expenditure of more than \$3,000,000 was proposed by 10 television projects which received FCC approval on November 15th. Two of these grants were to the Hughes Productions Division of the Hughes Tool Company, which has \$2,000,000 available for stations in Los Angeles and San Francisco. The establishment of Howard R. Hughes proposes to experiment in program production development in cooperation with Hughes Productions of Hollywood; study studio lighting effects; seek improvement of television transmitters, cameras, and synchronizing generators; test transmission of various numbers of lines between 421 and 525; compare different types of synchronizing signals; and try FM (frequency modulation) for the sound accompanying the pictures. In both cities the Hughes concern will operate on Television Channel No. 2 (60,000-66,000 kilocycles) with 10 kilowatts aural and visual power.

At the same time the commission authorized experimental operation for 5 other Los Angeles applicants. In addition, the commission granted stations to New York, Chicago, and Manhattan, Kansas, as follows:

Metropolitan Television, Inc., New York, to operate on Channel No. 8 (162,000-168,000 kilocycles); Columbia Broadcasting System, Inc., Chicago, to operate on Channel No. 4 (78,000-84,000 kilocycles); Kansas State College of Agriculture and Applied Science, Manhattan, Kansas, to use Channel No. 1 (50,000-56,000 kilocycles).

These contemplated programs of research and experimentation are pursuant to commission requirements looking to development of television to a point that will enable the industry to agree on a uniform transmission system of acceptable technical quality.

PUBLIC UTILITIES FORTNIGHTLY

Coöperation of the industry is further reflected in the comprehensive survey of the television situation now being conducted by the National Television Systems Committee. Organized last July through the joint efforts of the Radio Manufacturers Association and the commission, this committee represents the pooled engineering experience of the industry. Its various panels have been making a detailed study of many phases of television.

The commission on November 15th designated Monday, January 27th, as the time to receive a formal over-all progress report from the full committee. Members of the commission plan to visit the New York area on January 24th to see late television developments first-hand, prior to this conference with the National Television Systems Committee.

An investment of \$5,000,000 is represented in previous television authorizations by the commission.

* * * *

THE new Defense Communications Board on November 12th announced the completion of its preliminary organization. As created by Executive Order of the President on September 4, 1940, the board itself consists of chairman (Chairman Fly of the FCC) and representatives from the State, War, Navy, and Treasury (Coast Guard) departments. The operating arm of the board, however, will be the "coördinating committee," under which will function 11 subordinate committees which will cover the following spheres of communication activity: Amateur radio, aviation radio, cables, domestic broadcasting, interdepartmental radio, international broadcasting, commercial radio, state and municipal radio, telegraph, telephone, and United States government radio.

The coördinating committee will be headed by Lieutenant Commander E. K. Jett, chief engineer of the Federal Communications Commission. Other members are Francis deWolf (State), Major W. T. Guest (War), Commander Earl E. Stone (Navy), Commander J. F. Farley (Coast Guard). The membership of

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the 11 subordinate committees has not as yet been designated.

In addition to the subordinate committees, three liaison committees will function along with the coördinating committee. There will be a law committee, a labor advisory committee, and an industry advisory committee, to perform functions suggested by their titles. Only the personnel of the law committee has so far been designated for the three liaison groups.

The law committee will be headed by Telford Taylor, general counsel of the FCC. Other members are Captain J. W. Huyssoon (War), Steven Spingarn (Coast Guard), Lieutenant Commander Franz O. Willenbacher (Navy), and Raymund T. Yingling (State).

* * * *

BEGINNING on November 15th the National Broadcasting Company closed its sustaining programs to all music controlled by the American Society of Composers, Authors and Publishers (ASCAP). This ruling was the latest move against the society by the radio networks, which contend that ASCAP is asking too much money for use of its tunes after January 1st, when the present contract between the two groups expires. After January 1st, there will be no ASCAP tunes on any network program, sustaining or commercial, unless the dispute is settled.

On another field in the fight, Richard Himber, band leader, sent a telegram on November 14th to Mayor F. H. LaGuardia asking the mayor to act as mediator in the controversy "as a fellow musician." Mr. Himber said it was becoming increasingly evident that the deadlock "will prevent the public from being able to hear over the radio traditional and popular American music."

The networks have been gradually shutting down on ASCAP music, which includes most of the song hits of the last fifty years. In place of these familiar tunes, the networks have been using more and more music in the public domain and songs from Broadcast Music, Inc. (BMI), radio's own Tin Pan Alley.

Financial News and Comment



By OWEN ELY

American Gas and Electric Company

AMERICAN Gas and Electric Company is not considered an integral part of the Electric Bond and Share system, although EB&S owns 18.9 per cent of the outstanding common stock (which would technically make it the holding company). Unlike other utilities affiliated with that system, American Gas maintains a separate office and operating organization. Electric Bond supplies financial service under an agreement terminable at will by either party, and C. E. Groesbeck is chairman of both companies.

The company has been endeavoring for many months to obtain a ruling from the SEC that it is not a subsidiary of Electric Bond and Share. The latter company has indicated that it cannot complete its own integration plans until this question of relationship is cleared up.

American Gas operating units serve a population of about 3,400,000 in Ohio, Pennsylvania, New Jersey, Indiana, Michigan, Virginia, West Virginia, Kentucky, and Tennessee. The accompanying map indicates the groupings of these units, and Table I (page 806) shows the income received from principal prop-

erties and groups, and the estimated liquidating value of the investments. A summary by territorial groups is given below.

The company's properties in Virginia, West Virginia, Kentucky, and Ohio (most of which are interconnected, or easily capable of interconnection) make up about three-quarters of the system investments; hence, any decision by the SEC that the more isolated properties should be disposed of would not prove a serious difficulty. While the company has outstanding \$30,000,000 of its own bonds, these are fairly well offset by about \$26,815,000 net current assets (almost all cash), reported at the end of last year in the parent company's treasury. (Additional cash may be received if Appalachian Electric Power carries through a refinancing program and repays part of the parent company's advances.) After deducting the small portion of the funded debt not covered by cash, and the \$35,562,300 par value of preferred stock, there would remain about \$30 per share break-up value for the common stock—which is close to the present market value.

AMERICAN Gas and Electric has long been recognized in financial circles



	Anal. of Income			Earn. Not Rec'd.	Total Est. Value of Advances and Investments
	Total Int.	Pfd. Div.	Com. Div.		
Virginia, West Va., and Ky.	\$1.3	\$1.3	\$1.1	\$.8	\$65.7
Ohio, West Va., and Tenn. ....	.1	.2	4.6	1.3	64.8
Michigan and Indiana ....	.2	.3	1.1	.3	17.9
Pennsylvania ....	..	..	1.1	.2	10.6
New Jersey ....	..	.2	1.2	.1	14.1
Miscellaneous companies ....	.1	..	..	..	1.3
	<u>\$1.7</u>	<u>\$2.0</u>	<u>\$9.1</u>	<u>\$2.7</u>	<u>\$174.4</u>

PUBLIC UTILITIES FORTNIGHTLY

Year	Earnings per Share Common System Basis	Parent Co. Basis	Dividends Paid on Common
1940 Est.	\$3.00	..	\$2.00
1939	2.50	\$1.91	1.85
1938	2.23	1.62	1.40
1937	2.57	2.09	2.10
1936	2.20	1.81	1.40
1935	1.88	1.70	1.50
1934	1.66	1.35	1.00*
1933	1.75	1.47	1.00*
1932	2.31	..	1.00*
1931	3.65	..	1.00*
1930	5.34	..	1.00*
1929	6.10	..	1.00*

*Plus substantial stock dividends.

as one of the stronger holding company systems, which is reflected in the above earnings record of the common stock.

The increase in earnings in 1940 was largely due to gains in gross revenues,

which in the twelve months ended September 30th amounted to about 12 per cent over the corresponding previous twelve months' period. If taxes had not increased some 27 per cent, net income

Table I

AMERICAN GAS AND ELECTRIC COMPANY

Analysis of 1939 Income and Estimated Liquidating Value of Investments
(Millions of Dollars)

	Anal. of Income			Earn. Not Rec'd.	Actual or Est. Market Value of			Amount Total of Ad- Est. Value
	Total Int.	Pfd. Div.	Com. Div.		Bonds	Pfd.	Common	
<i>Va., West Va., and Ky.</i>								
Appalachian Elec. Pwr....	\$6	\$1.2	\$1.0	\$7	...	\$19.3	\$17.0(a)	\$13.5 \$49.8
Kanawha Valley Power... .3	...	...	...	...	...	...	...	5.0* 5.0
Kentucky and W.Va.Pwr. .4	.1	.1	.1	.1	\$8.5*	.8	1.6(b)	... 10.9
	1.3	1.3	1.1	.8	8.5	20.1	18.6	18.5 65.7
<i>Ohio, West Va., and Tenn.</i>								
Ohio Power .....	..	.2	4.4	1.2	...	3.3	56.0(a)	1.5 60.8
Wheeling Electric .....	..	...	.2	.1	...	.1	2.4(b)	... 2.5
Kingsport Utilities .....	.1	...	...	...	1.0*	.5	...	... 1.5
	.1	.2	4.6	1.3	1.0	3.9	58.4	1.5 64.8
<i>Michigan and Indiana</i>								
Ind. & Mich. Electric....	.2	.2	.7	.2	...	4.0	7.2(b)	... 11.2
Indiana General Serv. ..	..	.1	.4	.1	...	2.7	4.0(b)	... 6.7
	.2	.3	1.1	.3	...	6.7	11.2	... 17.9
<i>Pennsylvania</i>								
Scranton Electric .....	..	...	1.1	.2	...	.3	10.3(b)	... 10.6
<i>New Jersey</i>								
Atlantic City Electric... .	..	.2	1.2	.1	...	3.7	10.4(b)	... 14.1
<i>Miscellaneous Companies</i> ..	.1	...	...	...	...	...	...	1.3* 1.3
Totals	\$1.7	\$2.0	\$9.1	\$2.7	\$9.5	\$34.7	\$108.9	\$21.3 \$174.4

* Estimated.

(a) Multiplier of 10 applied to 1939 earnings.

(b) Multiplier of 8 applied to 1939 earnings.

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FINANCIAL NEWS AND COMMENT

would have shown a substantially larger gain. The parent company's refunding program, completed early this year, helped to improve the share earnings for the common stock, which for the period mentioned above showed a gain of 19 per cent—\$2.98 versus \$2.51.

At the current price around 31 the stock is selling at about ten times earnings, to yield about $6\frac{1}{2}$ per cent.

St. Lawrence Power and the "Grid"

LITTLE has been heard for some time of the administration's \$200,000,000 "grid" plan as a war defense measure, but the recent revival of the St. Lawrence power project (with \$1,000,000 set aside from the President's "blank check" defense fund for preliminary surveys, etc.) raises conjecture whether the grid idea may not also be revived, now that the New Deal has obtained four years' extension of tenure.

As indicated in the accompanying (page 808) chart (which we have labeled "The Utility Industry's Own 'Grid'"), the electric light and power in-

dustry east of the Mississippi, in the state of Texas, and on the Pacific coast is already on a highly interconnected basis. There are, it is true, several narrow corridors where interconnection does not normally exist, although it is probable that ample facilities already exist or could easily be constructed. One of these corridors, according to the map, runs between New York and New England; one traverses northern Pennsylvania; another splits that state in half and apparently isolates Washington, D. C., together with Delaware and eastern Maryland; while another cuts off part of Michigan from its neighboring state to the south.

Some of these deficiencies in the private grid system may be due to the desire of certain utilities to avoid crossing state lines and thus coming under broader Federal regulation. It would seem a wiser course, instead of spending \$200,000,000 for a Federal grid which would largely duplicate the existing grid—and apparently would not remedy all its deficiencies—to seek the coöperation of utility companies to close up the gaps in the present system.



PUBLIC UTILITIES FORTNIGHTLY

THE UTILITY INDUSTRY'S OWN "GRID"

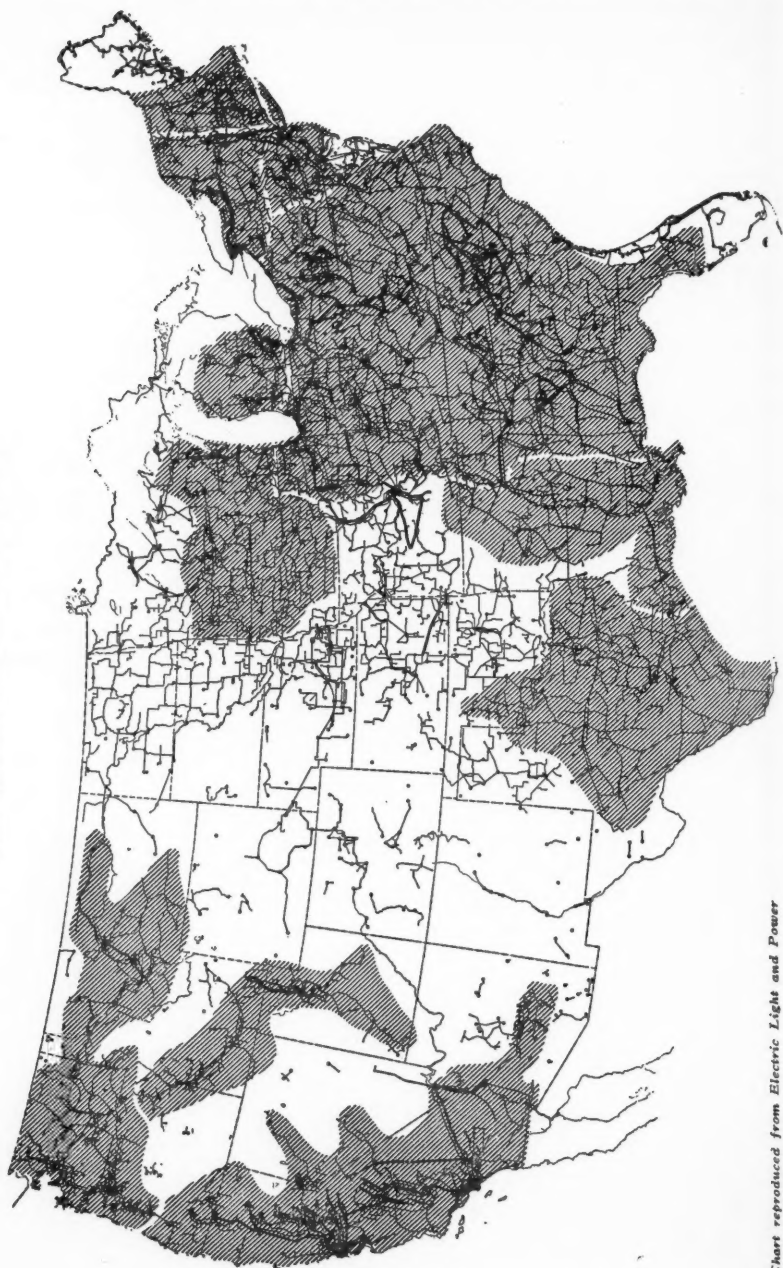


Chart reproduced from Electric Light and Power

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FINANCIAL NEWS AND COMMENT

	<i>Recent Price about</i>	<i>Est. 1940 Earnings per Share*</i>	<i>Price Earnings Ratio</i>	<i>Indicated Dividend Rate</i>	<i>Dividend Yield about</i>
Boston Edison	32	\$2.15	15	\$2.00	6.3%
Brooklyn Union Gas	15½	2.50	6	1.00	6.5
Columbia Gas & Elec.	5	.60	8	.30	6.0
Commonwealth & Edison	29	2.25	13	1.80	6.2
Consol. Edison N. Y.	24	2.05	12	2.00	8.3
Cons. Gas of Balto.	72	4.75	15	3.60	5.0
Detroit Edison	116	7.70	15	6.00	5.2
Lone Star Gas	10	1.20	9	.70	7.0
Pacific Gas & Elec.	28½	2.50	11	2.00	7.0
Pacific Lighting	38½	3.10	12	3.00	7.8
Peoples Gas L. & C.	41	4.75	9	3.00	7.3
Public Service N. J.	31	2.70	11	2.45	7.9
Southern Calif. Edison	27½	2.10	13	1.90	6.9
Averages			11		6.7%

*As estimated by *Standard Statistics*, after allowance for increased normal taxes and excess profit taxes.



As *Electric Light and Power* pointed out in an editorial some months ago, the capacity of the proposed grid would be small compared with the electrical demands of our major production centers, since 300,000 kilowatts is about the maximum that can be transmitted, and even this would be reduced by long-distance losses; such a transmission system would also be particularly vulnerable to sabotage, plus many normal hazards.

Thus far, with production activity in many lines at new high levels, there has been no indication of any breakdown in the service furnished by the electric light and power industry.

While \$200,000,000 is, perhaps, only a drop in the budgetary bucket, it is to be hoped that it will be expended for more worthwhile projects than the proposed Federal grid.

Utilities Stocks Seem Oversold

UTILITY stocks enjoyed a brief advance before Election Day, but this was soon cancelled after November 5th and was followed by a continued sagging trend which has carried some issues close to the year's low levels. The trend of the Dow-Jones averages has been as follows:

	<i>Utility Average</i>	<i>Industrial Average</i>
October 14	21.52	130.73
November 4	23.28	135.21
November 9	22.05	138.12
November 22	20.41	131.24
Net change, Oct. 14- Nov. 22	Decr. 5%	Incr. 8%

With industrials still showing a moderate net gain, the decline in utilities cannot be entirely blamed on the election. Other probable factors are (1) the increase in the normal tax to 24 per cent, and fears of a further increase next year; (2) President Roosevelt's decision to revive the St. Lawrence power project, together with the reported plan for a \$200,000,000 fund to buy up utilities in the Pacific Northwest; and (3) probable stiffening of the SEC attitude, as indicated in recent criticism of the El Paso financing, etc. Much of the selling in utilities was reported to be for investment accounts, the owners apparently fearing the imposition of further tax burdens against operating companies, or punitive measures against holding companies.

However, the selling would appear to have been carried to extremes in some cases. Many utility stocks now offer very substantial yields and even if dividends must be trimmed next year, yields should still be satisfactory, as compared with the low returns obtainable from many other securities.

PUBLIC UTILITIES FORTNIGHTLY

INTERIM EARNINGS PER SHARE*

Electric and Gas Companies	End of Period	12-month Period			3-month Period		
		1940	1939	Incr.	1940	1939	Incr.
American Gas & Elec. Consol.	Sept.	\$2.98	\$2.51	18%	....	....	....
Amer. Power & Lt. (Pfd.) Consol. ...	Aug.	7.12	5.49	30	....	....	....
American Water Works Consol.	Sept.	1.30	.62	110	.12	.26	D54%
American Water Works Parent Co. ...	Sept.	.45	.38	18	.08	.12	D33
Boston Edison Parent Co.	Sept.	2.40	2.48	D3	.47	.39	20
Cities Service P. & L. (Pfd.) Consol. ..	Sept. (a)	25.70	25.71	..	5.87	6.97	D16
Commonwealth Edison Consol.	Sept.	2.30	2.36	D3	.42	.55	D24
Com. & Southern (Pfd.) Consol.	Sept.	8.96	8.69	3	1.57	1.56	1
Com. & Southern (Pfd.) Parent Co. ...	Sept.	5.00	....	..	....	....	..
Consolidated Edison, N. Y. Consol. ...	Sept.	2.23	2.18	3	.35	.33	6
Consolidated Edison, N. Y. Parent Co. .	Sept.	2.15	2.12	2	....	....	..
Cons. Gas of Baltimore Consol.	Sept.	4.83	4.70	3	.83	1.02	D19
Detroit Edison Consol.	Sept.	8.12	7.84	4	....	....	..
Elec. Bond & Share (Pfd.) Parent Co. .	Sept.	6.37	6.68	D5	1.56	1.62	D4
Elec. Power & Lt. (1st Pfd.) Consol.	Aug.	8.92	5.57	60	....	....	..
Elec. Power & Lt. (1st Pfd.) Parent Co. .	Aug.	1.65	.54	205	....	....	..
Engineers Public Service Consol.	Sept.	1.60	1.51	6	....	....	..
Engineers Public Service Parent Co. ..	Sept.	.57	.61	D6	....	....	..
Federal Light & Traction Consol.	Sept.	2.24	2.64	D15	.31	.53	D48
Inter. Hydro-Elec. (Pfd.) Consol.	June	4.50	9.14	D51	1.23	2.08	D41
Long Island Lighting (Pfd.) Consol. .	Sept.	4.88	5.69	D14	1.86	1.79	4
Long Island Lighting (Pfd.) Parent Co. .	Sept.	5.70	5.07	12	....	....	..
Middle West Corp. Parent Co.	Sept. (a)	.35	.25	40	.15	.08	87
National Power & Light Consol. (b) ..	Aug.	1.29	1.12	15	....	....	..
Niagara Hudson Power Consol.	Sept.	.56	.55	2	.10	.05	100
North American Consol.	Sept.	1.99	1.94	3	.35	.41	D15
Nor. States Pwr. (Del.) Consol. (Cl.A)	Aug.	3.88	.25	..	....	....	..
Pacific Gas & Electric Consol.	Sept.	2.79	2.83	D2	....	....	..
Public Service Corp. of N. J. Consol. .	Sept.	2.53	2.94	D14	....	....	..
Southern California Edison	Sept.	2.19	2.46	D11	.71	.85	D16
Stand. Gas & Elec. (Pr. Pfd.) Consol. .	Sept.	8.66	5.65	53	D2.65	D1.21	..
Stand. Gas & Elec. (Pr. Pfd.) Parent Co. .	Sept.	2.24	1.04	115	.16	D.14	..
United Gas Improvement Consol.	Sept.	1.03	1.06	D3	.22	.25	D12
United Gas Improvement Parent Co. ...	Sept.	.97	.97	..	.23	.24	D4
United Lt. & Power (Pfd.) Consol. ...	Aug.	8.51	5.77	48	....	....	..
United Lt. & Power (Pfd.) Parent Co. .	Aug.	4.30	1.46	195	....	....	..
Gas Companies							
American Light & Traction Consol. ...	Aug.	1.71	1.56	9	....	....	..
Brooklyn Union Gas	Sept.	2.09	3.36	D38	.32	.51	D37
Columbia Gas & Electric Consol.	Sept.	.51	.52	D2	D.20	D.08	..
El Paso Natural Gas Consol.	Sept.	3.24	3.93	D18	....	....	..
Lone Star Gas Consol.	Sept.	1.13	1.05	8	D.13	D.00	..
Oklahoma Natural Gas Consol.	Sept.	3.76	1.72	118	....	....	..
Pacific Lighting Consol.	Sept.	2.74	4.20	D35	....	....	..
Peoples Gas Light & Coke Consol.	Sept.	5.24	2.88	182	D.08	D.48	..
United Gas Corp. (1st Pfd.) Consol. ...	Aug.	13.91	9.87	41	....	....	..
United Gas Corp. (1st Pfd.) Parent Co. .	Aug.	10.36	8.38	24	....	....	..
Telephone and Telegraph Companies							
American Tel. & Tel. Consol.	Aug.	10.92	9.43	16	2.38	2.35	1
American Tel. & Tel. Parent Co.	Sept.	9.78	8.88	10	2.37	2.40	D1
General Telephone Consol.	Sept.	2.81	....	..	....	....	..
Western Union Tel.	Sept.	2.82	.53	430	.67	.83	D19
Traction Companies							
Greyhound Corp. Consol.	Sept. (a)	1.33	1.92	D31	.92	1.21	D24
N. Y. City Omnibus Consol.	Sept. (a)	3.12	3.37	D8	.89	.91	D2
Systems outside United States							
Amer. & For. Pwr. (1st Pfd.) Consol. .	June	5.74	5.41	6	1.50	1.23	22
Amer. & For. Pwr. (1st Pfd.) Parent Co. .	June	3.06	1.61	90	.42	.33	27
Inter. Tel. & Tel. Consol. (d)	June (c)	D.02	.21	..	D.08	.17	..
Inter. Tel. & Tel. Parent Co.	June (c)	D.10	D.02	..	D.01	.03	..

D—Deficit or decrease. "Consol." indicates consolidated income statement, including subsidiaries.

*On common stock unless otherwise indicated after name of company.

(a) Nine months ended September 30th.

(b) Parent company statement available for twelve months ended June 30th showed \$.63 versus \$.51.

(c) Six months ended June 30th. (d) Excludes Spanish, German, and Polish properties.



What Others Think

European Utilities under Fire



WHAT happens to a utility organization when a hostile invading army begins to "blitzkrieg" its system, sector after sector? This was the question discussed in the recent address by Dannie Heineman, president of the Permanent Committee *Soc. financière de transports et d'entreprises industrielles*, better known as "Sofina," before the Empire State Gas and Electric Association late last September. Sofina used to have its head offices in Brussels, Belgium. It is a holding company with service units in a number of European countries, Argentina, Mexico, and North Africa.

Mr. Heineman says that operating utilities have taken little or no precaution against the danger of invasion or bombardments, except where some hydro stations have emptied reservoirs as a flood precaution. Based on his experience during the invasion of the low countries, he suggested that any power station facing the peril of being cut off from supplies would be first of all well advised to increase its stock of fuel and equipment. A number of European electric and gas works were caught short in this respect. Some were within easy reach of coal fields and saw no point in stocking fuel, but overlooked the possibility of transportation collapse. Parisian utilities, before the German invasion, had only a 3-day stock of coal and relied for routine replacements in large part on shipments from England.

INTERCONNECTION of hydro stations, while valuable as an operating economy, are vulnerable to war damage. The speaker referred especially to the Truyere hydroelectric station in central France which contributes to Paris, Marseilles, and interconnects with Swiss

and Pyrenean systems. He said in part:

Speaking of interconnections, I need hardly say how valuable they are as a safeguard against the breakdown of a given plant; but the network of interconnections established in Europe has not been laid down with the specific aim of remedying devastation that might be caused by war. These interconnections have no doubt been found very helpful under war conditions in the Netherlands, Belgium, and France, although they were not attributable to any anticipation of war. They were intended to be works of peace.

You are familiar with the progressive measures by which the British government has been rationalizing electricity under the grid system during the past few years. Some minor power stations still survive in the London area. They are uneconomic and condemned to disappear in due course; but as it happens they constitute today, in abnormal circumstances, a valuable stand-by should the large modern works be put out of operation.

Speaking of damage from bombing, Mr. Heineman said that the experience of Sofina properties in Spain during two and a half years of civil war showed only minor damage on both thermic and hydro power plants. Indeed, it was found, he said, that "anarchist sabotage caused greater havoc."

ONE interesting result of the unfortunate Spanish experience was the fact that economic activities are likely to pick up with remarkable resilience after the cessation of hostilities. Thus in Catalonia, consumption of electricity has already surpassed that of the year 1935 when the Spanish civil war broke out. This, in spite of local cotton mills being handicapped by lack of raw materials. While some of this recovery is probably due to the substitution of electricity for gas as a result of coal shortage, it contrasts with the continu-

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ing depression in Spain and supports the view that electric distribution is conspicuous among industries which enjoy an inelastic demand; having become almost as much of a necessity as daily bread.

And so, while the speaker expected that in territories invaded by Germany, as well as in the so-called unoccupied parts of France, a marked decline of electric consumption would be shown because of shattered purchasing power and industrial plant destruction (by both sides), it may well turn out that the electric load will come back more quickly with the return of peaceful or nearly peaceful conditions than in the case of other major industries. Mr. Heineman stated on this point:

... factories were obliged to close down when Belgium was invaded and called up all her forces, 800,000 men—one-fifth of her male population—including almost every engineer under the age of forty-six. Moreover, in a number of instances, steel works, cotton mills, collieries, and other undertakings of strategic importance, voluntarily dismantled sections of their machinery in order to prevent operation under enemy control. German efficiency is likely to have provided for the replacement of the missing parts; and, however that may be, I hear that electricity distribution has been resumed practically throughout the country. The bills go out to the customers as before, reduced in amount rather than in number. Sooner or later, electricity distribution must assist in healing the wounds that war has inflicted and the electricity industry should be one of the first to benefit from the recovery it will have helped to bring about.

THE difference between the present war in Europe and the last war is obviously the factor of mobility. In 1918 hostilities were confined to more or less front line sectors with sporadic bombing behind the lines. Today the bombing is much more intense and general. The engagement of conflicting forces is characterized by rapid change in location.

This naturally increases the problem of utility management. In the case of Sofina, Mr. Heineman said, officials tried to visualize what might happen if Belgium were invaded. They assumed before the German armies entered the

low countries that such invasion would eventually take place and prepared several positions to which the organization might retreat in case of invasion.

When the Germans entered Belgium last May, a selected staff of Sofina was already on its way by rail to Ypres (a Flanders town known to many World War veterans as "Wipers"). The change in the seat of administration was legally aided by a Belgian statute of February, 1940, which specifically authorized any Belgian company to transfer its location inside or outside the realm by the simple decision of its board of directors acting upon a war emergency.

Although ample telephone communications had been provided at the new offices at Ypres, military regulation soon restricted the use of the telephone to such an extent that Sofina found itself greatly hampered in communicating with its associated companies. Before that problem was solved the great speed of the German advance soon made Ypres an awkward place for administration.

This time the staff of Sofina set out for Lisbon, Portugal. This distant haven was chosen not because of any prophetic expectation that France would collapse, but because French administration was so tied up with rigorous regulation, Sofina feared it might be difficult in wartime to communicate with associated companies outside of France. It was decided while making the move to go to a nation still politically at peace—hence Lisbon.

LISBON offices had been prepared in advance as early as August, 1939, and a complete set of duplicates of accounting records, engineering files, and contracts was kept there. Mr. Heineman gave a graphic account of this exodus:

... Yet we contemplated an intermediary halt in France in order to collect our refugee employees. For a few weeks we camped at Biarritz, with a mere outpost in Lisbon. Getting out of Belgium and proceeding through France was not an easy job. There were passport troubles and the roads were choked by interminable caravans of cars pathetically roofed with mattresses as a safeguard against short-

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range machine gun fire from the air. Train service had broken down; our Ypres staff was scattered; but by hook or by crook, by car, lorry, and bicycle, they managed to reach Biarritz—with their files and even their mothers-in-law—some experiencing thrilling escapes.

When it became manifest that the French army was about to surrender, some of our senior officers went to Madrid where they took the opportunity of discussing with the Spanish authorities questions pertaining to our interests in Spanish companies. There we met with a most friendly reception; but our goal was Lisbon and it is to that city that we moved a substantial body of our staff. All those officers and employees of our company that had left Brussels, numbering close to 200 with their families, successfully negotiated the visa barriers which have retained so many people in France against their will. I am grateful to the French government, as well as to the Spanish and Portuguese governments, for the facilities they have offered to Sofina in that respect; a certificate attesting that such and such a person belonged to the staff of Sofina had, at the various frontiers, the magic effect of an "Open, Sesame." These governments were good enough to look on Sofina as an asset of international importance. I confess I take some pride in looking upon my company in the same light; we try to do beneficial work in many parts of the world.

The speaker paid a compliment to the orderly and farsighted rule of Portugal. He called it "a lung through which continental Europe can still draw a breath of air" and about the only place in Europe where an international organization such as Sofina can remain in communication with associated properties.

This is no easy task where the holding company must run offices outside of a territory under enemy control. One precaution taken was the formation of a United States affiliate that would act as liaison with overseas undertakings and provide for shipment of supplies and remittances of funds in the event of European complications.

SOME idea of the financial difficulties arising under such situations can be seen in the following passage of Mr. Heineman's address:

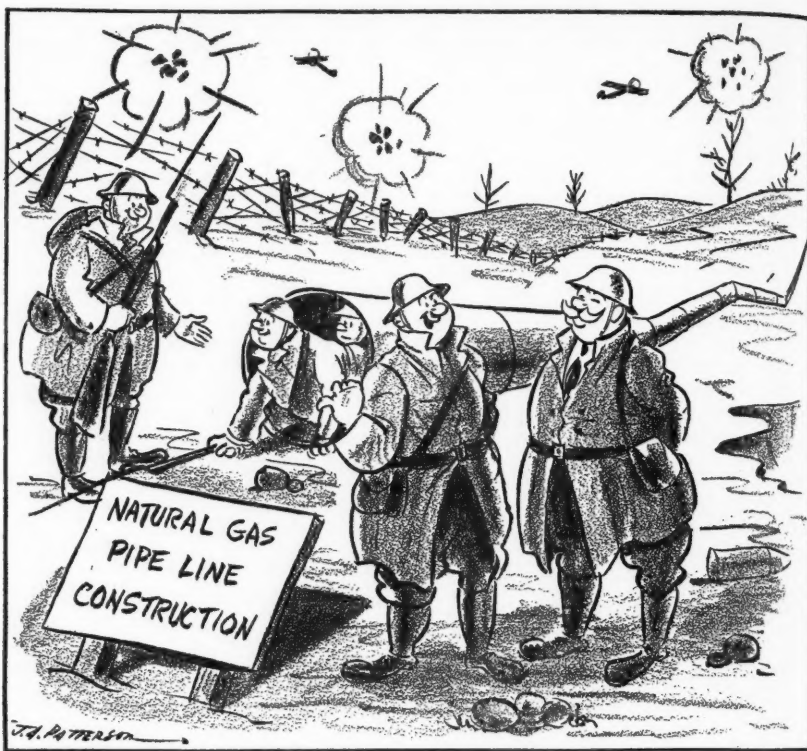
I referred just now to the duties of a holding company to provide its associated companies with funds, if required, on short credit for development expenditure (inci-

dentally, these duties put upon the holding company the obligation to husband its resources with a view to a possible emergency). No clear-cut dividing line can be drawn between money remittances and deliveries in kind. Sofina has had characteristic experiences in this connection. Our operating companies in Turkey had considerable sums of money to remit to Belgium in respect to dividends; payments in cash to Belgium were limited by a clearing arrangement so we found ourselves compelled to collect our clearings in the form of live sheep and wheat, eggs and hazelnuts. These dividend sheep were driven over 200 miles before they reached their port of shipment. I need hardly say that this cumbersome form of transferring money involved substantial sacrifice, but when a country has no available balance in foreign currencies, it must either borrow abroad, or it must furnish goods and services abroad if it is to discharge foreign debts or continue to effect purchases outside its frontiers. A nation must enable others to sell in order that it itself may supply and receive payment. Obstacles involving transfers of money, like all other obstacles to the flow of trade, are deplorable outcomes of a disorganized economic system. They also rank among the causes of this disorder. War conditions accentuate the difficulties impeding the movements of capital, partly because they tend to increase protectionism.

In conclusion the speaker warned against the spirit of national isolation which may lastingly set up new barriers in the way of national relations. This is especially embarrassing to the maintenance and progress of utility industries. The utility business, he said, "is a work of peace; its task is public service." It follows from this that obstacles to peace are obstacles to public service and the more abundant living standards which all mankind can enjoy only through progress in public service.

THAT is why, also, utility companies realize perhaps more than some other industries the interdependence of nations—the need for their work. Referring to the possible "fifth column" angle of foreign investment in utility enterprise, Mr. Heineman said from personal experience "international investments of capital, and of technical experience which is usually applied to the management of these investments, are

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"LIKE TO SEE THE 'BLUES' MATCH THAT FOR A STRATEGIC RETREAT, EH, MAJOR?"

equally beneficial to the country that invites or accepts foreign enterprises and to the country that enjoys this form of hospitality.

In the same vein he deplored the

suspension of international conferences and the interruption of free industrial communications because of censorship.

—F. X. W.

Bombardment and Sabotage As Utility Problems

MODERN methods of warfare bring the truth of General Sherman's famous remark home to utilities more than ever before. Gas, electric, telephone, and transportation systems, as well as water and sewage facilities, are not only prime military objectives but under modern conditions are vital to the maintenance

of the home front, physically and psychologically.

A number of such utility systems have been heavily bombed in England, France, Germany, and in the low countries. A number have suffered from sabotage. The British publication, *Electrical Review* (September 7th), states:

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The effects of high-explosive and incendiary bombs on overhead lines can only be known as the result of experience. While they can be more easily and quickly patched up than can underground cables, the amount of damage sustained is probably more than was anticipated by many undertakings when spares were being ordered and stored.

From information sent us by engineers who have recently suffered from aerial bombardment, it appears that conductors have suffered more severely than any other overhead transmission component. Cross-sectional area appears unimportant, as all sides seem to have received similar damage under similar conditions. Conductors have been cut totally or partly through by bomb splinters or sharp stones from high-explosive bombs up to about 100 pounds at distances up to about 100 yards from the line. . . .

Low-voltage lines are reported to have suffered more from falling or flying debris than from bomb splinters, damage being localized as a rule. So far we have seen no evidence that blast is causing much trouble, except possibly in the blowing of high- and low-voltage fuses. The oil canister type of incendiary bomb has, in several instances, burnt through conductors; from the small crater that it forms black oil may be splashed to a radius of 20 feet. Most of the heat developed seems to rise vertically and with sufficient intensity to burn through copper conductors up to 0.06 square inches.

Copper conductors have shown to better advantage than aluminum; they seem less prone to damage and are more quickly and cheaply repaired. It has been found possible, by careful workmanship, to draw together the two ends of a severed aluminum steel-core conductor and to joint them with a cone-grip mechanical joint without materially upsetting the sag of the conductor.

This has been done on long spans even when the intermediate crossarms have suffered damage due to their taking line tension suddenly in one direction. In very few cases have we heard of damage that has resulted in the severance of all conductors in a span.

Wood poles do not appear to have suffered much, in spite of their obvious ill-treatment when a conductor or conductors have been severed in mid-span. One case is on record of a bomb splinter of approximately 6-square-inch area going completely through a pole (7½ inches in diameter at that point) about 2 feet from the top, due to the explosion of a high-explosive bomb 50 yards away. We have heard of no instances, so far, of a pole having been overturned due to blast; one bomb of small caliber exploded at the foot

of an "A" pole without harming either pole or line.

Little important damage to steel towers is reported. Small fragments have been cut out of the tower legs and other ironwork by flying bomb splinters, and in one instance a direct hit on the stub by a high-explosive bomb of small caliber caused no trouble. Insulator damage has been surprisingly small, and the necessity for removal appears to be rare. Chips are to be found in plenty, but even disk-type strain sets seem to have borne a charmed life.

THE operating lessons thus learned from abroad have not been lost on utility management in the United States. This was seen in the recent address of Colonel W. F. Rockwell, of Pittsburgh, Pennsylvania, president of The Water and Sewage Works Manufacturers Association. Colonel Rockwell was addressing the fifty-ninth annual convention of the New England Water Works Association at New York city. He emphasized (after commenting upon the fact that waterworks and drainage systems in European countries seem to have gotten off fairly lightly) that from the standpoint of civilian health and morale, the integrity of water and sewage supply is most important. This is obviously because serious interruption or destruction of such facilities in modern large cities would soon result in disease epidemics.

Colonel Rockwell suggested the immediate study of the problems of safeguarding such utility facilities of important American cities from bombardment and sabotage. While it is probably impossible to make a city absolutely disaster-proof in this respect, important steps to minimize such dangers can certainly be taken.

Obviously, here in America the danger, assuming a continued hostile atmosphere, lies more in the direction of sabotage than enemy bombardment (although the latter contingency is not to be discounted by any means). It is also just as necessary to protect utility records as physical plant, inasmuch as incendiary bombs and sabotage constitute special threats to the preservation of essential utility records.

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FOR many years, state regulatory commissions have required that the management of utility properties should preserve all pertinent records in a safe and appropriate place and not destroy the same without commission approval. (See *Re Southern Indiana Telephone & Telegraph Co.* PUR 1929E, 641.) Recent demonstrations made by the Remington Rand organization at Marietta, Ohio, indicate that repositories for vital utility records are now available which are capable of withstanding most severe damage of an incendiary or explosive nature.

Furnace tests at Marietta were designed to simulate actual conditions known to exist in burning buildings. Cabinets selected from finished stock were exposed to temperatures running as high as 1,974 degrees Fahrenheit for nearly four hours, after which contents were shown to be unharmed. Shock tests were also made whereby record cabinets were dropped more than 30 feet onto solid concrete blocks without material injury to the contents.

As to physical plant, telephone, gas, and electric companies are known to be experimenting with possibilities of duplicate lines in strategic locations, the use of armored conduits, and the possibility of deeper burial and arcading of conduits. It may be that the war abroad with all its misfortunes will prove a minor blessing in disguise by giving utility industries in the United States an opportunity to protect public service in all its ramifications from the dangers of hostile destruction.

For example, at a recent meeting of the Wisconsin Utilities Association in Milwaukee, A. P. Kellogg, General Electric turbine engineer, suggested floating electric power plants as a possible replacement for bomb-destroyed facilities. The West coast, the Great Lakes region, and a large portion of the eastern

United States could be reached by generating stations housed in vessels designed to pass through the New York state barge canal. A projected 50,000-kilowatt, self-contained floating power plant is being studied by the General Electric Company, according to Mr. Kellogg, who added that that size seemed to be the largest rating practicable.

A 50,000-kilowatt plant will meet the average needs of a city of 150,000 to 200,000 population. During a water shortage in 1929, the aircraft carrier *Lexington* supplied power to the city of Tacoma, Washington, and the Public Service Company of New Hampshire has had a floating power plant in service since 1930.

YEARLY station peaks vary on many of the large utility systems and if floating power plants are available, they can be moved from one location to another as load requirements dictate. Mr. Kellogg added:

With the present rapid expansion of industrial loads in locations which are hard to predict, the floating power plant can be placed at an advantageous point on short notice. On larger systems, where it is known that the total load will grow during the next two or three years, but where it is difficult to decide upon the most economical location for a new generating unit, one power barge could be used at any point until a permanent power plant could be built.

As an auxiliary to the national defense program, the value would be great, as additional power could be made immediately available for replacing damaged facilities or increasing production.

Equipment of the projected plant closely follows standard marine and central station practice, with modifications for housing in a hull similar to that of a lake freighter, with an overall length of 290 feet, 43-foot beam, 10-foot draft, and a low bridge clearance of 15 feet.

Camp Fire Girls Check Up on Utilities

PUBLIC relations for utility organizations not only begin at home but seem DEC. 5, 1940

to begin mighty young these days. This was seen in an interesting project spon-

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sored for its members by Camp Fire Girls, Inc., during the current year 1940.

The young ladies of this organization set out to see how their city kept house; how it managed to provide everyone with enough water, gas, and electricity; how it kept the streets clean; and how it disposed of waste materials. Did the older girls (ranging from fifteen to eighteen years of age) find that their city was a good housekeeper? The answers, of course, varied, because of the numerous cities investigated. After all, it was the 1940 "older girls' project" for this nationally known organization.

Six winning reports recently announced at city hall in New York city by the president of the city council, Newbold Morris, were received from groups of girls in the following communities: Berkeley, California; East Detroit, Michigan; Sherman, Texas; Sault Ste. Marie, Michigan; St. Paul, Minnesota; and Rio Hondo county, California.

The project was conducted according to a plan and time-table designed by the headquarters of the organization in New York city. Committees were formed to investigate water supply, gas and electric supply, and sanitation, respectively. There were numerous meetings and investigation groups were formed into squads.

These squads descended upon utility organizations without warning, combining their invasion with picnics, bicycling, hikes, hay rides, and overnight camping trips. Plant officials were questioned, examined, and cross-examined.

SAFETY first demonstrations involving utility angles were combined with frolicsome boy-and-girl parties at which games and skits showing the futility of sticking pennies in the fuse box and similarly sound utility advice for the future housewives and mothers of America were given. While the consensus of the final reports appeared to be that the utility job of keeping house for a city is a prodigious task compared with ordinary housekeeping, some of these Camp Fire Girl groups volunteered astute suggestions based on their personal inspection tours. One California town, as a direct result of the girls' questioning, took steps to prevent an emergency of water shortage. Officials are changing the whole system.

Girls in a Michigan community drew up a list of recommendations after examining the city dump and city gas, electric, and pumping station. They suggested a number of reforms, including the placing of electric wires underground. They even ventured into the province of the law in a Minnesota city and were asked by the local commissioner of public safety to prepare a draft governing the regulation of bicycle traffic. One suggestion included the formation of a "Youth Court" to try bicycle offenders.

However, utility officials in the communities investigated, on the whole, got off fairly lightly and were thanked by the young ladies for their cordial cooperation in making this novel promotion of good citizenship an interesting success.

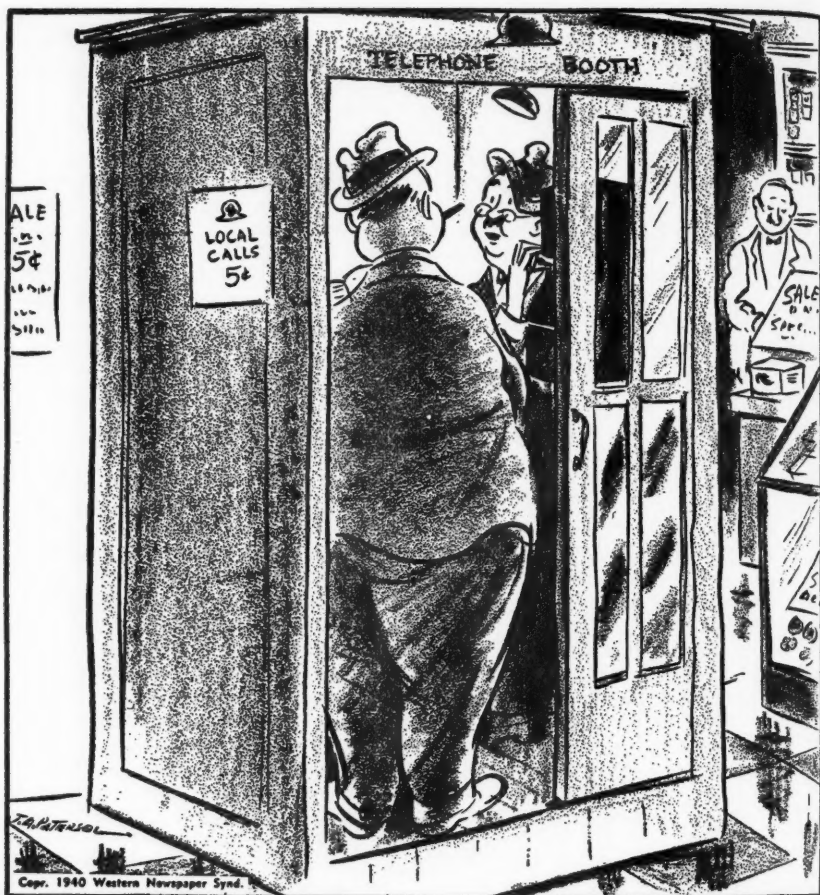
Utility Reform Compared to Banking Control

REGULATION of the public utility industry to the ends of "real rehabilitation and basic reform" must parallel to a large degree the course followed by banking legislation in recent years, according to Leo T. Crowley, chairman of the Federal Deposit Insurance Corporation and chairman of Standard Gas & Electric Company. Mr. Crowley ad-

ressed the annual convention of the Wisconsin Utilities Association at Milwaukee on November 11th.

The speaker said that in the utility industry as in the banks government "has a clear and definite responsibility to protect the public from dissipation of its wealth by corporations whose existence government sanctions" and that the ex-

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"OH, DON'T MIND ME—I'M ONLY GOING TO LOOK UP AN ADDRESS"

tent of supervision by government always has depended upon the degree to which management itself recognized and regarded the public interest."

Mr. Crowley said that both banking and utility legislation in recent years have been curative rather than preventive, attempting to right wrongs of the past. After tracing the course of banking reforms, he continued:

Can you avoid drawing a parallel? To such innovations as registration of its securities and supervision of its accounting systems the utility industry has adapted

itself. Its financial condition has improved in so far as business generally has improved. But of real rehabilitation and of basic reform there have been little.

Of the need for rehabilitation? Drastic financial reorganization of holding companies and operating companies that are burdened with huge preferred stock dividend arrearages is inevitable. On the basis of the latest published figures (as of January 1, 1938) out of 158 holding companies having outstanding preferred stocks with a par or liquidating value of about \$2,400,000,000 there were 48 companies with outstanding preferred stock (in the hands of the public) amounting to \$1,331,000,000 which were in arrears as to dividends to

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the extent of about \$337,000,000. On that date, therefore, the arrearage represented an average accumulation of more than 25 per cent of the par value of the stocks.

Among the operating subsidiaries of registered holding companies there were found 224 companies with preferred stocks in the hands of the public amounting to \$1,447,500,000.

Of these, 70 companies had accumulated arrearages of about \$96,000,000 on their outstanding preferred stocks in the amount of \$443,000,000. Thus over 30 per cent of the preferred stocks of the operating companies was in arrears to the extent of 21.6 per cent.

This picture has improved during the intervening three years, but the magnitude of the problem is still considerable. If funds are to be obtained by these companies for replacements, for needed expansion of plant and distribution facilities, or even for refinancing, their debt and capital conditions will have to be reset on a sound basis.

The need for extensive reform of organization and practice in the utility industry, I take it, no one denies. We are generally agreed that such practices as the arbitrary write-up, overcapitalization, skimping on depreciation, and otherwise using improper accounting methods can no longer be tolerated. It is likewise evident that the day of pyramiding corporate structures, extortionate service, management, and construction contracts with subsidiaries, and unjustifiable inequalities in the distribution of voting control is drawing to an end.

WITH respect to the workings of the Public Utility Holding Company

Act of 1935, Mr. Crowley said an open-minded attitude on the part of government as well as common-sense interpretation will be needed to make it as useful to the public and the investor as possible. He added:

I believe, for example, that the integration provisions of § 11 of the act will have to be administered with a fine sense of reason, balance, and timing, and with the knowledge that the act is designed to prevent abuses in the future and to close avenues of abuse—not to turn back the pages of history. I believe that the SEC, approached by the industry with any offer of coöperation in which it has confidence, shows that point of view. I believe that most holding companies can understand the benefits and the economies that will accrue from consolidation and simplification of their scope of operation.

Mr. Crowley believed that the encouragement of the management of operating companies by employee directors is wrong in principle. He said he recognized that service and management relationships in the past were frequently sources of abuse, although he could not concede that all such relationships should be barred.

He concluded that the purposes of the act would be better served if supervisory authorities possessed and exercised powers of visitation and examination over utility holding companies comparable to those now exercised by other regulatory agencies over banks.

The Self-liquidation of Holding Company Reorganization

A MOST perfunctory glance through the bound volumes in which are reported decisions of the Securities and Exchange Commission would reveal an almost methodical trend of opinions which seem to be marching right through the Public Utility Holding Company Act, starting with § 1.

Section 1, of course, is more or less a statutory editorial on the abuses of the holding company form, so there isn't much to be done about it by way of decision. But if you take Volume 1 of the

SEC decisions, you will notice a great number of cases arising under § 3 and a few under § 2, which are the "exemption clauses." Through 1937 and 1938, the cases under § 3 drop down to almost nothing because by that time most of the companies either have been exempted from the Holding Company Act or have registered under it. During these years, §§ 6 and 7, with the correlative provision involving security issues under § 10, seem to have engaged most of the commission's attention; and beginning 1939

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and continuing through the present year the number of cases begin to increase which involve the controversial § 11.

This generally orderly progress of SEC decisions suggests the possibility of the commission marching right through the statute and coming out the other end of it sooner or later. Such a suggestion presents an oversimplified picture. Yet, with respect to § 11—the reorganization section which used to be known by the nickname of the “death sentence”—there are reasons for believing that it is more or less self-liquidating and that the time will come when all the holding companies have gone through the mill or through the wringer, which will leave the SEC with little more to do than routine regulation of security issues. Even as to the latter functions, the trend is towards simplified procedure, calculated to make the regulation less burdensome.

ADDRESSING the Practising Law Institute in New York city on October 14th, Joseph L. Weiner, director of the public utilities division of the Securities and Exchange Commission, gives us food for thought along this line:

The closest analogy to § 11 (b) (1), that is, the geographical, physical, or property simplification — call it what you will — is probably found in the Sherman Act itself. There is, however, this striking difference: The Sherman Act contained merely a prohibition making a monopoly or an agreement to restrain trade unlawful and appropriately left its enforcement to the Department of Justice. In the Holding Company Act, failure to conform to the standards of § 11 is nowhere made unlawful. Indeed, even failure to comply with an order of the commission, directing the action or steps to be taken to achieve conformity, is expressly excluded from the penal provisions of the act. Section 11 differs also from other regulatory statutes which, as a rule, are designed to shape future conduct on the basis of existing facts. For example, the usual public service commission law seeks to control future security issues, future rates, future entries in accounts, and such other matters as a particular commission in its wisdom deems appropriate. Section 11, on the other hand, seeks to undo what has been done, even more than it seeks to control future conduct, and, although the Holding Company Act contains provisions for supervision of financing, loans, dividends, servicing, and

other features of the activities of both holding and operating companies, it is clear from the legislative history that these other provisions are regarded primarily, first, as an aid to the accomplishment of § 11 and, second, as a means of protection pending accomplishment of § 11, and only secondarily as an independent affirmative form of regulation. For the unique thing about the Holding Company Act as a regulatory device is that fundamentally it is a self-liquidating project. To a very large and probably a major degree, its enforcement will result in the continual shrinking of the activities subject to the jurisdiction conferred by the act. The usual regulatory statute attempts to preserve an existing course of conduct by subjecting it to a continued and usually ever-increasing scrutiny and supervision. The Holding Company Act, on the other hand, seeks to accomplish its objective by a reshaping of the course of conduct itself, with a continual relaxation and probably final elimination of scrutiny and supervision.

Mr. Weiner went on to discuss three examples of enforcement under § 11. First was the Indianapolis Power & Light Company Case, in which the sale of the company's stock terminated its relationship with the Utilities Power & Light Corporation, a holding company controlling properties scattered throughout the United States and Canada. As a result of this the company now operates as an independent utility and is no longer subject to regulation under the act.

ON the other hand, a different approach is to be seen in the case of the Houston Natural Gas Corporation, a Delaware concern which owns stock in four Texas utility companies. The parent was obliged to register, because of the interstate character of its situation, but shortly after worked out a plan whereby all of its properties were transferred to the holding company which in turn transferred them to a new Texas corporation. After that the Delaware corporation was dissolved. The effect of this was to confine the entire family tree to the single state of Texas and by the same token eliminate the jurisdictional status under the Holding Company Act.

A third illustration mentioned by Mr. Weiner of how the commission's jurisdiction is “self-liquidating” was seen in the case of San Diego Consolidated Gas

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& Electric Company which, as its name implies, operates in California, although a subsidiary of the Standard Gas and Electric system which operates properties primarily in Wisconsin and Minnesota. The directors of the Standard system recognized the need for the disposal of some of their far-flung properties in order to meet the requirements of § 11. They also wanted to reduce the company's debt structure to comply with § 11 (b) (2). Consequently, a plan to kill two birds with one stone was put

into operation. Standard Gas and Electric Company offered debenture holders of its own company the preference of exchanging such debentures for common stock of San Diego Consolidated Gas & Electric Company. If this is consummated, the San Diego Company will be removed entirely from the jurisdiction of the Holding Company Act, and the Standard Gas and Electric Company will be that much nearer to compliance with § 11, both as to geographical and corporate simplicity of its debt structure.

Notes on Recent Publications

PUBLIC UTILITIES AND THE NATIONAL POWER POLICIES. By James C. Bonbright. Columbia University Press. Price \$1.25.

This is one of five books which resulted from a series of lectures on the economics of public policy given during the 1940 summer session of Columbia University. The other four, which are also published by Columbia University Press, are "The Pattern of Competition," by Walter H. Hamilton; "Taxation and Fiscal Policy," by Mabel Newcomer; "The Search for Financial Security," by Robert B. Warren; and "Labor and the State," by Leo Wolman.

This book by Professor Bonbright is a sketch of the New Deal power policies and a discussion of the criticisms that have been leveled against them by the opponents of the administration's course in this respect. It explains the author's conception of the public utility issue as it constituted an issue in the 1940 presidential campaign.

RATE MAKING BY INTERIM ORDER. By A. L. Stein. *The Journal of Land & Public Utility Economics*. August, 1940.

SAFETY RULES FOR THE INSTALLATION AND MAINTENANCE OF ELECTRICAL SUPPLY STATIONS. National Bureau of Standards Handbook H31. U. S. Department of Commerce. For sale by Superintendent of Documents, Washington, D. C. Price 10 cents.

SHALL GOING VALUE BE INCLUDED IN THE RATE-BASE? By Irston R. Barnes. Part I. *The Journal of Land & Public Utility Economics*. August, 1940.

"No element of value," says this author, "has been more often denied, exaggerated, or disputed than that of going value." In this first instalment of a 2-part series, Dr. Barnes, who is assistant professor of economics at Yale University, reviews case law to the effect that the element of going value

has suffered from vagueness and confusion at the hands of courts and commissions. The author analyzes, in turn, various measures of going value, including (1) the so-called Wisconsin formula of "development cost"—unapproved by the U. S. Supreme Court; (2) the comparative plant method by which relative net earnings of an existing plant are compared with those of a hypothetical or "comparative plant"—generally unapproved; (3) the reproduction cost method based on estimates of the hypothetical cost of training personnel and attaching the existing volume of business—rejected by the Supreme Court in the St. Joseph Stockyards Case; (4) the expert-testimony method, based upon the estimate of the amount by which the "going concern" element would enhance the value of a plant in the eyes of a prospective purchaser—also rejected by the Supreme Court as "too conjectural"; (5) capitalization of initial risk as indicated by the difference in the rate of return required to induce investors to purchase securities of a new rather than an established enterprise—rejected by the author as unsuited to rate regulation. The concluding instalment of this article will discuss the economic and legal status of going value, as revealed in rate cases and the current attitude of the U. S. Supreme Court.

THE TAXATION OF RAILROADS IN NEW JERSEY. By Harley L. Lutz. Princeton: Princeton University Press. 1940. Pp. viii, 208. Price \$2.50.

Professor Lutz undertakes an analysis of the problems of railroad taxation in a state where it has become especially complicated. Although restricted to New Jersey, the author's observations about the shortcomings of railroad valuation should be of interest in other states. Professor Lutz proposes, as a matter of reform, that a gross earnings tax should be substituted for ad valorem taxation.



The March of Events

Carrier Problems Aired

AN appeal for a joint effort by management and labor to aid the railroads was voiced by Jacob Aronson, vice president of law of the New York Central Railroad, at the concluding session of the annual meeting of the Association of American Railroads in New York last month. Mr. Aronson said:

"Management and labor have a common ambition to restore and preserve a reasonable measure of prosperity for this great and vital facility. What they can do in that direction is dependent to a considerable extent on external forces, and to the extent that they close their eyes to the external conditions and the setting in which they find themselves they are defeating their own self-interests.

"Management requires a persevering determination to surmount difficulties and a due regard for the best interests of the whole railroad establishment rather than excessive or exclusive regard for what might superficially be looked upon as the immediate self-interest of any particular carrier. There has probably never been a time when the carriers were more dependent on each other than they are now, and there probably never has been a time when the financial collapse or other misfortune of individual carriers had a more profound effect than now on the industry as a whole.

"The rôle of railroad labor also is important, profoundly so. Railroad labor is almost completely organized into powerful and well-articulated groups. On the railroads there is no need to bleed and die for the right of collective bargaining, because it is, and for many years has been, an accomplished and solidly entrenched fact. Indeed, if anybody in the railroad industry is in need of bargaining power, collective or otherwise, it is management. But with great power there is also great responsibility."

E. E. Norris, president of the Southern Railway, reminded the railroad officials that their industry no longer had a monopoly of transport and that they well might look to their competitors in the field for suggestions as to how to improve their service.

The enactment of the Transportation Act of 1940 should help managements in making railway transport more appealing to shippers and travelers, J. A. Phillips, chairman of

the Railway Labor Executives Association, said.

To Get Grand River Power

A MARKET is "now in sight" for about 75 per cent of the output of the \$22,750,000 Grand River dam, which will produce about 200,000,000 kilowatt hours of electricity a year, General Manager T. P. Clonts said recently. Clonts said applications for power had been made by John Brown University, Siloam Springs, Arkansas, 660,000 kilowatt hours; the Ozark Rural Electric Coöperative, 1,000,000 kilowatt hours; and the cities of Vinita and Sand Springs, Oklahoma, 2,000,000 kilowatt hours each.

Negotiations were reported under way with the Public Service Company of Oklahoma, Bentonville (750,000 kilowatt hours) and Siloam Springs (2,160,000 kilowatt hours), Arkansas, the Carroll County Electric Coöperative of Arkansas (1,080,000 kilowatt hours), and the Eagle Picher Lead Company (36,000,000 kilowatt hours) which operates in the tri-state area.

The Grand River Dam Authority has contracts with the Oklahoma Gas & Electric Company, Chelsea, Collinsville, Disney, and Afton, Oklahoma, the Verdigris Valley Electric Coöperative and the Northeast Electric Coöperative.

Clonts said tentative plans for sale of power to Arkansas applicants called for delivery of the power to the Oklahoma-Arkansas border, with the purchasers distributing it among themselves.

"We have reserved a sufficient block of power to serve defense industries which we hope will be located in the Grand River dam area," Clonts said.

Income will be used to retire bonds sold to the Public Works Administration.

SEC to Request Simplification

A NEW batch of orders calling on additional utility holding company systems to simplify their corporate structures in accordance with the Public Utility Holding Company Act was recently reported being prepared by the Securities and Exchange Commission.

Among the more important systems which would be called on to take simplification steps was the Commonwealth & Southern.

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Issuance of these orders, it was said, would mark the beginning of increased activity on the part of the SEC to bring about compliance with the Utility Holding Company Act, with respect to both the corporate simplification provisions and the "integration" sections.

The corporate simplification provisions of the act require each holding company system to make such changes in its corporate set-up as may be found necessary to simplify the structure and to fairly and equitably distribute voting rights among security holders.

The SEC plans to step up the temper of its program of reshuffling and regrouping the nation's utility systems, instituting additional cases, and expediting hearings and the preparation of reports in cases already under way.

A new rule requiring some form of competitive bidding for the underwriting of new securities issued by registered public utility companies was also said to be certain of adoption by the SEC. This would be an alternative for or a supplement to the SEC's present regulation which requires "arm's-length bargaining" between utilities and investment bankers in the making of underwriting contracts.

Three members of the SEC, constituting a majority sufficient to decide the issue, were understood to believe that requirements of the Public Utility Holding Company Act can best be met by requiring utilities to call for sealed bids from underwriters or to "shop around" among underwriters to obtain the most favor-

able terms on their issues. These three are Commissioners Edward Eicher, Sumner T. Pike, and Leon Henderson.

Senate Probes Wire Tapping

SCHEDULED to probe alleged attempts to tap telephones of Supreme Court justices in 1938, when a TVA case was pending, a Senate investigating committee instead opened hearings at Washington on November 18th by focusing its searchlight on Thomas E. Dewey, New York county prosecutor and Republican presidential aspirant.

The course of the inquiry provoked a protest from a Republican member of the committee, Senator Gurney, of South Dakota. Just as the day's hearing ended the South Dakotan said "the information from all the witnesses seems to lead back to Mr. Dewey," and he wanted to know whether the New York prosecutor had been warned he was to be under investigation "by proxy." Senator Gurney insisted that Dewey be notified so that he might be represented at subsequent hearings. The committee's chairman, Senator Stewart, Democrat of Tennessee, acceded to the request.

The day's testimony had almost nothing to do with the alleged tapping of Supreme Court telephones, but laid an inferential groundwork for what committee attachés promised would be a further exploration of that field. The testimony was filled with references to what one witness called "big names."

Alabama

New Election Expected

EXPRESSING the belief that the proposition was "not properly understood" by a majority of those balloting in the general election, Probate Judge P. C. Black said recently that the question of Geneva county erecting a \$3,000,000 hydroelectric plant, defeated on November 5th, would be submitted "again before long."

The first unofficial figures had indicated

that the measure had passed by 54 votes, but the count in the Fadette box was found to have been reversed. A canvass of official returns showed the proposal defeated by 139 votes.

According to Judge Black, the county proposes to finance the development, including a dam across the Choctawatchee river, through a Reconstruction Finance Corporation loan with other revenues and the plant itself pledged for repayment.

Arkansas

Miners Sign REA Contract

ATHREAT by the Rural Electrification Administration to halt construction on a 110-mile rural electric line into the cinnabar area in Pike, Howard, and Clark counties was removed on November 14th when six of the operators signed contracts for electric power. The last remaining obstacle to the completion of the line, which operators said would hasten the development of the field, was overcome

at a conference between members of the Arkansas Quicksilver Producers Association and the state utilities commission at Murfreesboro.

R. J. Bemish of Washington, national defense consultant for the REA, had said that construction would be stopped unless the contracts were signed by 4 p. m. on November 14th. He subsequently announced the project would be rushed to completion.

Operators objected to certain features of

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the contract. They signed after Chairman Thomas Fitzhugh of the commission assured them that the writing of a new contract to clarify the disputed points would be recommended to REA by the state commission.

The contract establishes a demand billing of \$1.50 a month per kilowatt, plus energy charges of 2.5 cents per kilowatt hour for the first 50 kilowatt hours, 1.2 cents for the next 100 kilowatt hours, and eight-tenth cent for all other power. The Southwest Arkansas Coöperative Corporation, which will serve the line, will buy power wholesale from the Arkansas Power & Light Company at 8.5 mills per kilowatt hour.

Operators objected to a clause in the contract requiring them to pay a demand charge for each meter. Some of them said all meters would not be used at all time. The REA agreed to waive the demand billing on meters not in use.

Mr. Fitzhugh said the rate "compares favorably with the rate offered by private companies to coal and bauxite mines," adding that it is as low as the coöperative can offer.

Tax Assessment Protested

THE Arkansas Corporation Commission recently denied the Arkansas Louisiana Gas Company's petition for a reduction of its 1940 assessment of \$6,598,500 on its Arkansas properties. Commission Chairman John H. Page signed an order on November 14th making the assessment final. The company had asked that the valuation on which taxes would be paid in 1941 be reduced to \$5,389,529.

The commission said the company based its contention on the settlement of its recent rate case with the state utilities commission and on a permit issued by the latter agency to the Louisiana-Nevada Transit Company to compete for business in southwest Arkansas.

The Arkansas Louisiana Company said it suffered a net loss of \$250,000 annual revenue when the Louisiana-Nevada Company was permitted to serve two major industrial consumers, the Ideal Cement Company of Okay and the Hope Brick Works, which "necessitated substantial reductions in industrial rates to other large customers."

California

New Hetchy Program

THE city of San Francisco's "revised Plan E" for the distribution of Hetch Hetchy power by municipally owned facilities, for which approval of Secretary of the Interior Ickes was sought, contained 16 clauses.

The first provided that during the life of the agreement all electric power required by San Francisco consumers is to be supplied by the city, except to consumers on Treasure Island and the Bay Bridge and the railroads thereon. The excepted consumers are to be served by the Pacific Gas and Electric Company at rates fixed by the state railroad commission.

Excepted from the agreement also was the PG&E's Potrero gas plant and such facilities as may be required to serve consumers outside the city. The company is to operate and maintain the facilities, with the city pledging itself to retain company employees, and to pay an annual sum for use of the facilities and a monthly accounting at agreed rates for power used.

The city will also pay the company an amount equal to the company's expenses involved in the ownership, maintenance, and

operation of the electric power distribution system. Such payments will be in excess of taxes assessed.

The contract is to run for ten years, with all agreements between the city and consumers to be assigned to the company, on termination of the agreement. Six months' notice must be given before termination.

Financial arrangements with the Pacific Gas and Electric Company for a lease of Hetch Hetchy power distribution facilities would not be concluded until Secretary of the Interior Ickes decided on the legality of the lease. This statement was made by Mayor Rossi, who announced he was prepared to head a delegation of city officials to Washington if a meeting with Ickes could be arranged.

The mayor said that if the agreement did not meet with the terms of the Raker Act, the delegation would discuss with the Secretary of Interior a date upon which to hold a special election for submission to the people of a proposal to buy "our own distributing system."

Financial figures submitted by the PG&E, the mayor stated, showed the financial return to the city under a lease agreement would be approximately \$2,500,000.

Illinois

Commission Chairman Named

GOVERNOR John Stelle on November 6th appointed Roy D. Keehn chairman of the

state commerce commission. Keehn, who is sixty-three years of age, was born in Ligonier, Indiana.

The chairmanship of the state commission

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is the biggest plum which ordinarily is in the governor's power to bestow. The post was occupied by United States Senator James M. Slattery, who left it to occupy the vacancy caused by the death of Senator Lewis.

Although the job pays only \$6,000 a year, it provides wide authority over all public utilities—transportation, gas, electricity, and telephone. Commission members are barred from having other employment, but their duties are not necessarily heavy.

Offers New Contract

THE Illinois-Iowa Power Company offered the Belleville city council last month a 16 per cent reduction in the cost of electric

power to the city in exchange for a new 10-year contract. The present contract has six years to run.

There have been frequent efforts to obtain municipal ownership in Belleville. Two previous city administrations, some labor groups, and several neighborhood associations have sought it.

Allan T. Early, district manager of the utility, said it would be possible to operate the new municipal sewage disposal plant without additional cost to the city if the proposed rate reduction is accepted. The plant will use 25,000 kilowatt hours a month. Under the proposed reductions, there would be a saving of \$4,800 a year in street and city building light costs, Early said.

Kentucky

Plan New Steam Plant

THE Kentucky Utilities Company plans to build a large steam-electric generating plant on the Kentucky river near Tyrone, with initial capacity of 25,000 kilowatts costing about \$3,000,000, Robert M. Watt, company president, said recently.

The proposed plant would be linked with the company's eastern power transmission system, including steam-electric stations at Lexington, Pineville, Maysville, and Pocket, Virginia, and Dix dam hydroelectric station. This system

is connected with the Louisville Gas & Electric Company plants in Louisville, and through them with plants in Ohio and Indiana.

The station thus will help to supply towns between Carrollton and Maysville on the north, Glasgow on the west, and Norton, Virginia, on the east.

Options have been taken on 277 acres of land a few hundred yards downstream from the Tyrone bridge as a site for the plant. The Kentucky river site was selected because a station of this size requires as much water for operation as a city of some 40,000 population.

Maryland

Line Extension Authorized

THE state public service commission on November 15th authorized the Southern Maryland Tri-County Coöperative Association to extend its electric power lines 55 miles and borrow \$84,000 from the Federal government to finance the work.

An order approving the coöperative's proposal was issued shortly after a hearing on the plan, which involved extensions in Prince George's, Charles, and St. Mary's counties, and various changes, improvements, and additions in the service.

The commission warned the association, however, that it "shall not in any way inter-

fere with the service of the Maryland Light & Power Company at points where its lines cross, parallel, or come in close proximity to the existing lines of the Maryland Light & Power Company or such lines as shall hereafter be erected by that company."

In addition, the order enjoined the association from serving any customers now being supplied by the Maryland Light & Power Company. The line extensions must be completed within six months.

The loan of \$84,000, from the Rural Electrification Administration, is to be financed by promissory notes, secured by a mortgage or deed of trust on the coöperative's lines, generating plant, and other facilities.

Minnesota

Utilities Board Proposed

CREATION of a state public utilities commission will be proposed to the next state

legislature by two southeastern Minnesota lawmakers, J. L. Newman, secretary of the Stockton Electrical Light and Power Consumers' Committee, announced recently.

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He said Senator Michael Galvin and Representative George W. Kiefer of Lewiston will sponsor a bill to "protect" unincorporated communities either through a special public utilities commission or through extension of state railroad and warehouse commission powers.

Galvin said Minnesota "is only one of a few states in the United States which have no public utilities commission. The need for a body of that kind or for the expansion of the present duties of the Minnesota Railroad and Warehouse Commission is obvious and imperative. Under existent conditions in this state the unincorporated community is virtual-

ly powerless in its negotiations with any public utility corporation."

Leaders in unincorporated communities throughout Minnesota soon would be urged by the Stockton group and others to organize a statewide movement for a public utilities commission or its equivalent, it was said.

The lawmakers stated that the demand for a state body of that kind is the direct result of the efforts of the Stockton consumers for a reduction of rates by the Interstate Power Company, which serves about 300,000 patrons in Minnesota, North Dakota, South Dakota, Iowa, Wisconsin, Nebraska, and Illinois.

Nebraska

Probe of Expenditures Voted

DIRECTORS of the Central Nebraska Public Power and Irrigation District voted on November 15th to have all expenditures by members of the board, the general manager, and the secretary of the district examined and audited in the same manner in which expenditures of Dr. D. W. Kingsley, former president, were examined.

The board adopted unanimously a series of resolutions calling for the audits, after a

heated discussion of what should go into the motions.

An auditor's report of expenditures made by Dr. Kingsley was approved, seven members voting for, four against, and one not voting.

The meeting was called at the request of G. E. Johnson, general manager and chief engineer, to act upon the audit of the former president's expenditures. This would be filed with Public Works Administration authorities, in order that WPA officials can consider a grant the district is seeking.

New York

May Produce Subway Power

MAYOR LaGuardia sent to the Board of Transportation for study last month, a proposed program for modernizing and expanding New York city's power plants so that they may provide all the electric energy needed to operate all three divisions of the New York City Transit System.

The program, based upon a survey and report made by the J. G. White Engineering Corporation by authority of the Board of Estimate, submits alternative plans for consideration. The first, to cost \$10,866,000 over a period of from three to five years, involves merely the modernization of existing equipment in two power plants acquired from the Interborough Rapid Transit Company under unification. The second proposal involves not only modernization of that equipment but also a substantial increase in the capacity of both plants. The second proposal would cost \$50,000,000, to be expended over an 11-year period.

St. Lawrence Plan Attacked

PRESIDENT Roosevelt's proposed St. Lawrence electric power project would be "highly vulnerable, uneconomical, and unneces-

sary as a part of the present or any clearly foreseen national defense program," according to a report made public on November 17th by three committees of the Merchants Association of New York through John Lowry, president.

President Roosevelt announced on October 17th that \$1,000,000 had been allocated from the special defense fund for preliminary work on the St. Lawrence program. The Merchants Association's report recommended that any part of that sum not already encumbered by contracts be returned to the Treasury and that no more money be spent on it without previous specific approval by Congress. The report was signed by Alfred V. S. Olcott, chairman of the committee on inland waterways and water power; F. W. Doolittle, chairman of the committee on public utilities and law; and W. G. Patton, chairman of the committee on transportation. In reply to the President, the report asserted in part:

"Modern steam plants can produce electric power at lower cost than the proposed St. Lawrence project hydroelectric plants and such steam plants can be constructed in a much shorter time than the St. Lawrence project.

"A survey of power capacity to meet nation-

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al needs made in 1938 showed that there was ample available productive capacity to meet any national emergency then in sight. This survey has been kept up to date and the latest available information indicates that in August of this year, for the country as a whole, the gross excess capacity of installed generating plants exceeded the sum of the peak demands by 11,130,000 kilowatts, or 46 per cent. . . .

"The peak of demand for electric power in connection with the execution of the defense program authorized by the Congress during the present year will certainly be passed long before 1945. It is difficult, therefore, to understand how the allocation of \$1,000,000 from a fund placed at the disposal of the executive department to expedite the production of equipment and supplies for the Army for emergency national defense purposes can be justified.

"Construction of the St. Lawrence project

would mean the diversion of large amounts of money, labor, material, and equipment, which could better be used on projects directly and immediately contributing to the execution of the defense program. . . ."

Signs Labor Contract

A LABOR contract, praised by the union as the best ever negotiated with a public utility organization and welcomed by the employer group as a stabilizing force in its labor relations, was signed last month between the Consolidated Edison system and the Brotherhood of Consolidated Edison Employees.

The seven companies comprising the Edison system, in identical agreements, granted the brotherhood local in each company concessions ranging from pay increases to 12,000 workers to establishment of elaborate machinery to settle disputes.

Ohio

Gas Rate Issue Defeated

THE city and Ohio Fuel Gas Company were reported set to renew their litigation over the present gas rate after Columbus voters overwhelmingly rejected the compromise gas rate ordinance last month. With all precincts reporting, the vote was 48,336 for the ordinance, and 85,273 against it.

As a result of the electorate's decision, City Attorney John L. Davies was ready to continue litigation on two fronts: In Federal court seeking to obtain for consumers impounded money totaling nearly \$2,000,000, and in the

Ohio Supreme Court regarding the present average gas rate of 56.22 cents per thousand cubic feet.

After months of negotiation between the gas company and council, an agreement on a compromise rate was reached. The proposal, which included a refund of \$1,500,000 to consumers, was for an average of 56.22 cents per thousand cubic feet for the first two years and 61 cents on the average for the last two years. A provision of the ordinance was that all present litigation would end and the company would refund approximately three-fourths of the impounded money.

Oklahoma

Rate Cut Announced

A REDUCTION in electric rates of the Southwestern Light & Power Company, serving 81 cities and towns in the southwestern part of the state, will be ordered by the state corporation commission, effective January 1st, Reford Bond, chairman, announced last month.

Residential and commercial rates were in-

cluded and Bond estimated an annual saving of \$100,000 to customers of the company. He said the reduction was agreed to after investigations. Details of the new schedule were being worked out by the commission's staff and engineers of the company.

Bond also announced a reduction of \$1,660 or 6.8 per cent annually in electric rates for customers of the Oklahoma Power & Water Company at Sand Springs.

Oregon

PUD Results

PUBLIC utility districts were defeated in Clackamas, Washington, Marion, Lane, Coos, and Polk counties in the recent elections.

The organization of districts was approved in Union county, Central Oregon (Deschutes and Jefferson counties favoring, Crook county voting itself out), Central Lincoln, Clatskanie county, and proposed Columbia River PUD.

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Three bond issues, proposed to buy or build facilities for existing PUD's, carried comfortably. These were Tillamook, \$750,000; Wickiup, in Clatsop county, \$80,000; and The Dalles and north Wasco, \$475,000. A fourth bond issue, of \$210,000 proposed by the Nehalem basin PUD, showed a favorable 2-to-1 trend in meager reports.

The Citizens' Revenue Bond Committee of Tillamook, sponsors of the \$750,000 PUD bond measure, will be continued as a permanent organization as a liaison body with PUD organizations, it was decided at a meeting of the group on November 9th. The bond committee voted to change its name to the PUD Boosters' Club.

South Carolina

Santee-Cooper Refinancing

Two matters held to be vital to the Santee-Cooper power project, now under construction, were up at conferences in the East last month. At Washington, it was revealed, the possibility of refinancing the project, to assure a situation under which it could charge the lowest electric rates, was being taken up with the Reconstruction Finance Corporation.

In New York, conferences on the prospective purchase by Santee-Cooper of large privately owned utility properties in the state were going on, being another phase of the extended negotiations in this connection.

Senator James F. Byrnes, it was said, was directing the discussions in Washington looking to a refinancing of Santee-Cooper. It was also learned that Senator Byrnes had con-

ferred with Edward R. Stettinius, of the national defense commission, in connection with having the project designated as a national defense development. Santee-Cooper's sponsors have for some time been seeking such a status for the project, believing that this would result in an acceleration of the construction pace.

Acquisition of land for the multimillion dollar project is now at least 90 per cent complete. A report filed on November 15th with Kenneth Markwell, Public Works Administration project engineer, by the land acquisition department of the South Carolina Public Service Authority, owners of the project, revealed that right of entry already had been gained on approximately 170,000 acres of land. A total of almost 195,000 acres of land is necessary for the construction purposes of the project.

Washington

Election Results

INITIATIVE No. 139 was decisively defeated in the election last month. This would have made public utility district financing subject to approval by local voters.

However, in the same election voters in King county, which surrounds the city of Seattle, defeated by a narrow margin a proposition to create a public utility district. Similar propositions were also defeated at Spokane and in

Walla Walla, Columbia, Adams, Yakima, and Island counties. Utility districts were approved in Kitsap, Jefferson, and Clallam counties.

In the gubernatorial election, Republican candidate Arthur D. Langlie led by a small margin the Democratic candidate, former United States Senator Clarence C. Dill, a vigorous public ownership promoter. Joseph P. Adams, Dill's King county campaign manager, said Dill would not consider the election settled until the official canvass of the vote is made.

Wisconsin

Contributes to Tax Fund

MADISON will receive \$165,918.21 and Dane county, \$65,839.25, as their share of state property taxes paid by two public utilities owning property in the county, secretary of state's office figures revealed recently. These utility taxes were due December 1st, C. A. Nickerson, state's chief accountant, explained.

The Madison Gas & Electric Company will pay taxes totaling \$274,657.46, of which the city and surrounding communities will receive

\$178,525.35, the state \$41,198.62, and the county \$65,931.44. Madison's share is \$164,067.25.

The Wisconsin Power & Light Company, the largest utility serving the county, will pay the county \$10,907.81, with Madison's \$1,850.96 and Stoughton's \$1,706.90 leading the individual communities' shares.

The utility tax is apportioned, with 65 per cent of such taxes going to the various towns, cities, and villages; 20 per cent to the counties on the same basis; and the remaining 15 per cent to the state.

The Latest Utility Rulings

Telephone Rate Investigation Terminated Because of War Conditions



THE Minnesota commission ordered that an investigation of telephone rates in the Minneapolis metropolitan area be terminated upon acceptance by the company of rate revisions involving an annual reduction of \$149,000 a year. The order was said to be in no way a bar to the commission later taking further appropriate action. Describing the conditions upon which this order was based, the commission said:

It is apparent that operating conditions are now and for some time in the future will be uncertain, because of the repercussions of the wars in Europe, Africa, and Asia. If past experience be any guide, the defense programs of the government will affect still further market and price levels. Increased Federal and state taxes are already here and are reflected in the record before us. It is now generally understood that under comparable conditions preceding the last World War, it was practically impossible to fix rates for any definite period. What the present unsettled condition may become under the full impact of the defense program cannot be foretold.

It was not considered to be in the public interest to determine a valuation in an abnormal period of high prices. Since value must be determined as of the time of inquiry, the higher value fixed in such a period would become part of the rate base and continue indefinitely into the future. From the patrons' viewpoint, it

was said, value should no more be ascertained upon the basis of an abnormal period of high prices than, from the utility's viewpoint, upon panic, low-price periods. Rate base valuations should not be based upon sudden or abrupt rises or declines in prices.

It was observed that the company was planning an expansion program of approximately \$2,000,000 during 1940 and 1941. Before the present investigation and resultant hearings could be completed and an order issued, a substantial part, if not all, of the expansion program would be completed and would have to be considered.

Labor costs of the company had increased about 33 per cent, owing primarily to a reduction from a 6-day to a 5-day work week for employees and to increases in wage levels. A state gross earnings tax had been raised from 4 per cent to 7 per cent, and the company had been subjected to the state income tax and to the moneys and credits tax. Recent enactments had increased Federal income tax rates. *Re Northwestern Bell Telephone Co. (Minneapolis metropolitan area) M-2502.*

The commission followed a similar course in *Re Northwestern Bell Telephone Co. (Duluth metropolitan area) M-2470.*



Public Interest Not a Sufficient Standard In Exercising Delegated Powers

THE court of common pleas of Dauphin county (Pennsylvania) has reversed its own opinion in 34 PUR(NS) 98 and has held unconstitutional Public Utility Law, § 702, requiring commis-

sion approval of contracts between public utilities and affiliated interests. The court finds no standard fixed by the statute to guide the commission in its approval or disapproval of such con-

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tracts. The court made this statement:

It follows that the action of the commission would be predicated upon a standard fixed by itself. The right to fix a standard involves the right to change the standard. No matter how high the motives of the commission may be, it may not constitutionally be vested with the power to fix its own standards. That is the duty of the legislature which it may not delegate. It may delegate the duty to apply the standards to specific cases or to determine facts to which the standard applies. But it cannot delegate discretion to establish a standard which shall be the basis for the approval or rejection of contracts.

The court ruled that "public interest," undefined, is not a proper, suitable, or legal standard. The act does not define public interest. The commission is free to reach its own conclusion as to the meaning of the term. One commission might reach one conclusion and a later commission a different one. Or the same commission could change its mind so that public interest would have a variable meaning, dependent upon the current thought of the commissioners.

Standards for commission action need not necessarily be set forth in the same section which confers the power but may be gleaned from the whole act, said the court. If the legislative body has declared its policy and evidenced its intent, that is the criterion upon which the power may be exercised. The Utility Act, however, covers many diverse and unrelated subjects, and the court could not see how rates, discrimination, or adequacy of service were affected by the provisions of § 702. Discrimination and inadequacy might be remedied without recourse to this section, and rates are not affected by the contract between the affiliates. The section provides that the commission shall not be bound in fixing rates of any public utility to take into consideration an unreasonable payment made by such utility under any contract with an affiliated interest. This is so, even though the commission has itself approved the contract. *The Bell Telephone Co. of Pennsylvania v. Driscoll et al.*



Denial of Communication Service to Dealers in Racing News

FLORIDA, Maryland, and Ohio courts have followed other recent authorities in holding that a telephone or telegraph company is not required to furnish service used for illegal purposes. [See *Fogarty v. Southern Bell Teleph. & Teleg. Co.* (U S Dist Ct 1940) 35 PUR(NS) 296; *Re Michigan Bell Teleph. Co.* (Mich 1940) 34 PUR(NS) 65; *Plotnick v. Bell Teleph. Co.* (Pa 1940) 35 PUR(NS) 87.]

An Ohio Court of Common Pleas dissolved a temporary restraining order against discontinuance of telephone service where the evidence permitted the presumption that the user of the service was engaged in the illegal dissemination of race-track information. The evidence of the company did not show with definiteness that the racing information transmitted to the subscriber was sent to bookmaking establishments. Neverthe-

less the court said that in a hearing of this kind it was entitled to indulge in the presumption that subscribers are not paying \$25 a week for information solely for the purpose of learning the weights of jockeys and the names of horses and the betting odds "so as to store away such information in a memory book."

While it was conceded that in Ohio pari mutuel betting and horse racing have been legalized, no law in that state has legalized bookmaking establishments. Bets on horse races can be made and received only at race tracks and through pari mutuel machines.

Regardless of any question of conspiracy by the subscriber to aid and abet a gambling enterprise, the court was of the opinion that in an equity suit the subscriber must not only approach the court with clean hands, but must keep

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his hands clean after he has come into court.

The opinion continues:

It is significant to note in this case that many questions directed to the plaintiff in respect to the names and types of business of his subscribers went unanswered by him, claiming his constitutional right to refuse on the ground that it would tend to incriminate him. Should now the plaintiff be permitted to urge in a court of equity that there was no evidence as to who his subscribers are and what type of business they were engaged in when the plaintiff by his own conduct refused to divulge the same? We think that to sustain the plaintiff's contention in that respect would be making a mockery out of courts of justice and would bring into disrepute our entire system of judicial procedure.

The general rule was stated that a public utility should not be required to furnish its facilities and service to a party who apparently makes illegal use thereof or a use that tends to produce illegal results of the use. *Cullen v. Ohio Bell Telephone Co.*

The supreme court of Florida stated that the law is well settled that the aid of a court of equity to prevent the discontinuance of telephone service which is being used to facilitate bookmaking in violation of law or in the promotion of any other gambling scheme or device will not be enforced. It was said that

this was a different question than that presented in Florida cases where the court had passed upon the power of a sheriff to seize telephone equipment and on the sufficiency of an indictment to charge an offense against the criminal law.

As to the question of requiring the petitioner for an injunction to answer certain interrogatories bearing on the nature of his business, it was said that one cannot come into a court of equity seeking relief and then refuse to answer questions pertaining to the matter about which relief is sought. If a litigant refuses to answer, he forfeits his right to ask for relief in equity. *Hagerty v. Southern Bell Telephone & Telegraph Co.*

A Baltimore city court sustained a public service commission order on the same basis where the Western Union Telegraph Company was involved. It was said that in its practical and legal effect a reversal of the decision of the commission would amount to a mandatory injunction requiring the company to supply special service where the subscriber was engaged in the business of furnishing information with knowledge that the recipients of the information might use it for an illegal purpose. *Howard Sports Daily, Inc. v. Weller et al.*



Water Carrier Granted Certificate

THE Pennsylvania commission, in authorizing a water carrier to furnish service between certain terminals in Pennsylvania, held that such authority should be granted when necessary. The adverse effect upon rail carriers of such approval was not considered controlling. The railroads serving the area affected had filed protests against the granting of the application.

It was stated that generally a certificate should not be granted to render one type of transportation if adequate and efficient facilities are presently available by means of another form of transportation, unless the new service supplies a

mode of transportation preferred by shippers, because of a more desirable aspect of its service.

The applicant had shown that it had a reasonable prospect of getting a portion of the shipments made by its affiliates and others. The fact that it might serve its affiliates does not reveal a public convenience and necessity, the commission held, but there was presented evidence that other companies would use the applicant's facilities.

With respect to this affiliation the commission said:

The protestant rail carriers direct our attention to the relationship between the ap-

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plicants and Pittsburgh Coke & Iron Company, Hunter Steel Company, Hillman Coal & Coke Company, Hillman Transportation Company, and Pittsburgh Steel Company. J. H. Hillman, Jr., director of many coal and coke companies, is president and a director of Pittsburgh Coke & Iron Company and is president and a director of Hunter Steel Company, in which Pittsburgh Coke & Iron Company has a substantial interest. He is chairman of the board and a director of Hillman Coal & Coke Company, and a director of Pittsburgh Steel Company. All of the incorporators are substantially interested in certain companies mentioned as potential shippers of freight to be handled by the proposed transportation company. There is no evidence that such companies are not legal entities cooperating with each other only to the degree commonly experienced in industry.

Even if for purpose of argument, protes-

ants' contention that the applicant company is a plant facility of Pittsburgh Coke & Iron Company and other companies in which J. H. Hillman and other incorporators are officers or have a stock interest, the law is clear that upon such facts, or even upon close relationship between an industry and a proposed carrier, common carrier status is not defeated.

Finally, the commission held that in passing upon an application for such a certificate it must preserve the interests of the public, taking into consideration not only the interests of the particular shippers located at or near the terminals involved, but also the interests of the existing carriers and of the public in general. *Re Neville Transportation Co. (Application Docket No. 56887)*.



Street Railway Company Required to Remove Rails upon Abandonment

THE superior court of Pennsylvania affirmed a supplemental order of the commission attaching conditions to its consent to abandonment of a street railway service so as to require removal of tracks, ties, and paving, and resurfacing between rails, where conditions of the roadbed were hazardous to public travel.

In affirming the order, the court concluded that the commission may, in granting a certificate for abandonment of street railway service, attach reasonable conditions to its consent so long as they are proper under the company's franchise or under contracts previously entered into with municipal authorities. The commission's statutory power to impose such conditions is not limited to matters of service, the court said, but may extend to the safety of the public.

A street railway company has a common-law duty upon abandonment of its tracks and services to remove the tracks and restore the invaded highways, it was held. The court, in construing the statute relating to the subject matter, said:

The plain import of the words "the commission, in granting such certificate, may im-

pose such conditions as it may deem to be just and reasonable" in § 203 (a), 66 PS § 1123 (a), is to give authority to the commission to impose conditions which will properly safeguard, under the particular circumstances, the public interest as to safety. The only limitation is that the conditions imposed must be just and reasonable. The public, whose safety is to be promoted in such a case, is not only that portion of the public which the utilities serve, but the general public which may come in contact with the facilities of the utilities. If we follow appellant's contention that "public" means only those who use the services of the utility, the word "patrons" becomes superfluous and meaningless. No word of a statute is to be left meaningless unless no other construction is possible.

So, the court concluded, the commission, when taking into consideration what conditions are to be imposed before abandonment of street railway service will be allowed, can and should consider the safety of the traveling public who use the highways.

In this case the court held that the evidence should support the imposition of the conditions and that their imposition was proper under the company's franchise and contracts entered into with the municipality. *West Penn Railways Co. v. Public Utility Commission*.

THE LATEST UTILITY RULINGS

Telephone Company Required to Enforce Tariffs for Hotel Telephone Service

THE New York Supreme Court decided in favor of the commission a proceeding against a telephone company to enforce filed tariff schedules fixing the rates that hotels might charge their guests for public telephone service. The schedules had been filed in pursuance of an order of the commission. The schedules allow surcharges to be made by the hotels to their guests above the common rates for public telephone service, and the hotels are constituted agents of the telephone company in rendering this service. Certain hotels regarded the permitted surcharges inadequate.

The question was raised whether the commission could enforce such a tariff as against hotels. The court held that the commission had such jurisdiction, stating:

Whether public telephone service shall be sold at all by a business corporation or private individual is a question well within the regulatory power of the commission to determine. (Public Service Law, Art. 5.) The sale of such service is closely integrated with the general public interest necessarily involved in the assumption of legislative control over the methods and rates of public utilities. It is, indeed, a rule of quite general application that telephone service is not to be resold by the subscriber. If, in the judg-

ment of the commission, the public service would be promoted by requiring that service in this field should be sold only directly by the utility itself and not at all by subscribers, its power in this direction would be undoubted.

If it had no such power, the utility could, by wholesaling its service to private enterprises, which were themselves beyond the pale of public regulation, effectively destroy a rate structure and a frame of regulation designed, in view of the legislature, to promote equal public utility service in the community as a whole.

The power thus to prohibit implies the power to condition a permission. The hotels are allowed to sell a public utility service furnished by the telephone company. They are allowed to surcharge the users of that service. The service as thus sold remains a public utility service.

In answer to a contention that the tariff was confiscatory as to the hotels, the court observed that confiscation is usually to be asserted only when service must be given at the required rate. The rates carried no compulsion to give service. The hotels might sell telephone service or not as they choose. Moreover, the adequacy of the rate and the surcharge of the hotels might best be determined in a proceeding before the commission. *People ex rel. Public Service Commission v. New York Telephone Co. et al.*



Subterfuge to Evade Jurisdiction of State Commission

THE Pennsylvania commission held that the hauling of freight across a state line for reshipment back into the state constitutes a subterfuge to evade the state commission's jurisdiction, where the carrier's shortest and normal route between the terminals it serves lies entirely within the state.

This ruling was made in a proceeding instituted by the commission to determine whether or not a motor carrier was operating between points in Pennsylvania as an intrastate common carrier.

It appeared that the company was hauling freight originating in Pittsburgh and destined to points in southwestern Pennsylvania, across the state line into Wheeling, West Virginia, and then back to Washington, Uniontown, and other Pennsylvania points. The question of subterfuge was said to be one of fact. The commission said:

The rates of respondents as to their round-about out-of-the-state route are computed in a manner which casts suspicion upon the bona fides of that operation. The respond-

PUBLIC UTILITIES FORTNIGHTLY

ents base their rates upon the highway mileage actually traveled when transporting from points in Pennsylvania to points in West Virginia, but in determining their rates between points in Pennsylvania when the out-of-the-state route is traveled, the respondents base their rates upon the direct highway mileage and not upon the mileage actually traveled.

In explanation of the disparity between the rates, the company attempted to justify its rates on the theory that the rates charged under the tariff filed with the Interstate Commerce Commission are based upon a mileage guide. The commission said, however, that this

mileage guide is determined by the direct highway distance between any two given points. The use of the direct highway mileage as a basis for determining rates was said to be obviously improper when the route does not cover the direct highway distance but covers one more than twice as long. The commission was convinced that the company had utilized the tariff filed with the Interstate Commission so as to give a semblance of regularity to the method of operation. *Public Utility Commission v. H. D. Ryan et al. (Complaint Docket No. 12723).*



Other Important Rulings

THE Maine commission held that a water company which had rendered service to certain properties for several years was estopped to claim that, by reason of the lack of charter authority, it had no duty to continue such service. *Re Mars Hill & Blaine Water Co. (U 1615).*

The Pennsylvania commission reaffirmed the principle enunciated in previous decisions that meter tampering results in discrimination against consumers whose meters are operated without interference, and that a public utility is justified in discontinuance of service, or other action under its tariff, to prevent such discrimination where evidence of tampering is established. *Spisak v. Duquesne Light Co. (Complaint Docket No. 13378).*

The Pennsylvania commission, in denying an application for a permit as a contract carrier under the "grandfather" clause of the statute, held that in order for a carrier to comply with the provisions of the act he must not only prove operation prior to the effective date of the act, but also that he has in fact been rendering service as a bona fide contract carrier by motor vehicle prior to that

time and has rendered such service since that date. *Re Miller (Application Docket No. 47436, Complaint Docket No. 12806).*

The Colorado commission held that after revoking a certificate of public convenience and necessity it had no jurisdiction over a carrier, since the statute gives the commission jurisdiction over operating utilities only. Accordingly, the commission dismissed a complaint seeking a determination as to the carrier's previous charges. *Re Borden (Decision No. 16064, Application No. 4746).*

The Pennsylvania commission denied operating authority to a motor carrier upon a finding that the applicant had knowingly violated the law and had operated in disregard of the commission's jurisdiction. It was determined that he was not a fit and proper person to be entrusted with a certificate and that approval of his application was not necessary or proper for the service, accommodation, and convenience of the public. *Re Tiedeman (Application Docket No. 26362, Complaint Docket Nos. 12550, 12559, 12561).*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports*.

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Public Utilities Reports

COMPRISING THE DECISIONS, ORDERS, AND
RECOMMENDATIONS OF COURTS AND COMMISSIONS

VOLUME 35 PUR(NS)

NUMBER 5

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RE SOUTH BAY CONSOLIDATED WATER CO., INC.

NEW YORK DEPARTMENT OF PUBLIC SERVICE, STATE DIVISION,
PUBLIC SERVICE COMMISSION

Re South Bay Consolidated Water
Company, Incorporated

[Case No. 9986.]

Rates, § 248 — Suspension of increases — Cost of proceeding.

1. The cost of rate proceedings in relation to revenues should be considered by the Commission in acting upon a suspension of proposed schedules involving an increase in revenue, p. 257.

Payment, § 20 — Quarterly or annual basis.

2. A change from an annual basis to a quarterly basis of water rates is desirable, p. 258.

Rates, § 605 — Burden of increase — Flat and meter customers.

3. Both flat rate consumers and metered consumers were required to bear a proportion of an increase in water rates, p. 258.

Rates, § 186 — Increase — Proof.

4. A water company should be permitted to file proper schedules to increase revenues which will not give the company an unreasonable return, although the company has not produced such proof as would fully satisfy the Commission, p. 258.

Rates, § 211 — Fixing by agreement.

Statement that rates for any special class of service can best be fixed by agreement based upon experience and a general knowledge of cost and conditions, p. 258.

[October 9, 1940.]

PROCEEDING on motion of Commission as to certain revisions to tariffs filed by a water utility; utility permitted to cancel suspended rate increases and to file new schedules recommended by Commission.

By the COMMISSION:

[1] Regulation, in its search for justice and nondiscrimination between all classes of a company's customers, must avoid strangulation of the company. The cost of these proceedings in relation to the revenues of the West Hampton plant should be considered. Fourteen months have already elapsed

since the proposed schedules which involve an increase of less than \$2,000 in revenue were suspended by the Commission.

It is a difficult task to ascertain the exact cost of servicing the various classes of a utility. Allocations of various items of expense must be made and these by their nature involve judg-

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ment of the proper percentage to be applied to the various items. As this judgment varies according to the determination of individuals there can be no exact rule. My position in this matter I have previously stated in my memorandum on the increase in gas rates in the city of Rochester (Case 9733, February 2, 1940), 33 PUR (NS) 393.

[2-4] I believe that rates for any special class of service can best be fixed by agreement based upon experience and a general knowledge of cost and conditions. This company has made a sincere effort, but has not produced such proof on the point at issue in figures as would fully satisfy the Commission, but upon any reasonable basis of valuation and considering revenues and expenses, it must be admitted the company is not earning a reasonable return at the present rates. The new rates will be upon a quarterly basis and not upon an annual basis as at present and this change is desirable and is already in effect in various other plants of this company. The estimated amount of increase, \$1,898 yearly, if realized will not give the company an unreasonable return.

However, I do not favor placing all the increase upon the metered consumers. The memorandum shows that the revenue, aside from that obtained from public sources which are based upon contracts, is divided roughly two-thirds from metered and one-third from flat rate consumers. It is difficult to increase flat rate consumers as they can reduce the number of outlets and so avoid any increase. On the other hand, metered consumers can, by economy, control their consumption. Both classes of consumers should bear their proportion of the increase.

I believe the company should be informed that if it cancels the present filing and files new schedules with the increase divided as outlined above and properly distributed among classes of consumers, the new filing will be allowed to go into effect and these proceedings closed. Subsequently, upon the completion of the continuing property record based upon original cost and the existing depreciation thereon, the Commission may, if it desires, again examine the rate structure and rates of this company.

SECURITIES AND EXCHANGE COMMISSION

Re Ebasco Services Incorporated

[File Nos. 37-31, 37-44, Release No. 2255.]

Expenses, § 49 — Accruals for indefinite pension plan — Cost of services to affiliates.

1. Accruals by a subsidiary service company for a pension plan cannot be regarded as proper elements of cost which may be included in charges for services to associate companies, under § 13 of the Holding Company

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Act, 15 USCA § 79 m, when no actual pension plan has been put into operation and no definite plan has been formulated or submitted to the Commission, p. 268.

Intercompany relations, § 19.92 — Subsidiary service company — Ownership of buildings.

2. Ownership of a building to house a subsidiary service company does not of itself contravene the provisions of § 13 (b) of the Holding Company Act, but whether ownership of a building may be permitted depends upon the particular facts of each case; and such ownership may be permitted when it is stipulated that no loss incident to future disposal or write-down of the investment is to be included in the cost of rendering services to client-associate companies, p. 270.

Intercompany relations, § 19.92 — Subsidiary holding companies — Lease arrangements.

3. Assumption of a lease by a subsidiary service company, seeking approval under § 13 of the Holding Company Act, may be permitted where the lease was entered into by the parent corporation prior to the passage of the Holding Company Act, where the subsidiary has enjoyed reasonable rentals under the lease, and where the lease does not involve a long-term obligation, although the Commission does not look with favor upon a lease arrangement under which the amount of rent is subject to the vicissitudes of the real estate market, p. 270.

Intercompany relations, § 19.92 — Subsidiary service company — Cost standard — Return on capital.

4. Return on capital used by a subsidiary service company is permissible only if it is necessary capital; if a holding company could obtain a return on its idle funds by transferring them to a service company where they contribute nothing to the performance of services, the cost provision of § 13 (b) of the Holding Company Act would be rendered nugatory, p. 274.

Intercompany relations, § 19.92 — Subsidiary service company — Necessary capital — Company management.

5. The judgment of company management is not conclusive as to what constitutes necessary capital for a subsidiary service company under § 13 of the Holding Company Act, but that judgment must be examined in the light of available standards, and among the relevant factors are investments in assets necessary to the conduct of business, working capital in the light of average monthly expenses, normal lag between expenditures and recovery thereof, prospective variations from the norms, and the experience of comparable organizations, p. 274.

Intercompany relations, § 19.92 — Subsidiary service company — Working capital.

6. A ratio of $2\frac{1}{2}$ to 1 between working capital and average monthly expenses was held ample to assure a sufficient amount of working capital for a subsidiary service company, p. 274.

Return, § 106.1 — Subsidiary service companies.

7. A 4 per cent return rather than a return of 6 per cent was approved as reasonable compensation for the use of necessary capital by a subsidiary service company under § 13 of the Holding Company Act, p. 275.

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Intercompany relations, § 19.92 — Subsidiary service company — Contract on cost basis — Indemnity fund.

8. Advancement to a subsidiary service company of an indemnity fund by a foreign affiliate, pursuant to a contract on a cost basis containing an agreement by the foreign affiliate to indemnify the service company against claims, was held to be unnecessary and to be detrimental to the interests of investors in the foreign affiliate, p. 276.

Intercompany relations, § 13.1 — Interlocking relations — Subsidiary service company.

9. The Commission must regulate or prohibit common personnel between a registered holding company and a service company if such interlocking relations operate to defeat the purposes of § 13 of the Holding Company Act, although the act does not deal specifically with that problem; the express mention of interlocking relations in other parts of the statute and in other statutes cannot be construed as impliedly prohibiting the Commission from administering § 13 in the light of its purposes, p. 277.

Intercompany relations, § 19.9 — Subsidiary service company — Intrasystem servicing.

10. Section 13 (a) of the Holding Company Act plainly evidences a congressional intent to prohibit intrasystem servicing by registered holding companies, p. 277.

Intercompany relations, § 19.91 — Interlocking relationship — Subsidiary service company.

11. Effective regulation pursuant to § 13(b) of the Holding Company Act is rendered impossible so long as interlocking officers and employees are paid by both the registered holding company and the subsidiary service company, p. 277.

Intercompany relations, § 19.91 — Subsidiary service company — Interlocking officers and employees.

12. Objections to interlocking officers and employees of a registered holding company and a subsidiary service company can be met by such officers and employees severing their relations with either company or by the holding company undertaking to pay the entire compensation of the common officers and employees, the second alternative being a step toward insuring that the standards of § 13 of the Holding Company Act are met, p. 277.

Intercompany relations, § 19.9 — Subsidiary service company — Action on declaration.

13. Issuance of a final order on a declaration for approval of a subsidiary service company, under § 13 of the Holding Company Act, was deferred in order to accord an opportunity to comply with provisions of the Commission's opinion on disapproved features and to present evidence on the question of economy and efficiency, temporary exemption being granted in the meantime, p. 280.

Intercompany relations, § 19.9 — Subsidiary service company — Exemption — Foreign operations.

14. Exemption of an international division of a subsidiary service company from the standards of § 13(b) of the Holding Company Act should be granted upon a showing that such division performs service, sales, or construction contracts for associate companies which do not derive, directly or indirectly, any material part of their income from sources within the

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United States and which are not public utility companies operating within the United States, subject to conditions appropriate in the public interest and for the protection of investors, p. 281.

[August 21, 1940.]

DECLARATION by subsidiary service company for finding that it is so organized and conducted as to meet the requirements of § 13(b) of the Holding Company Act, and application for exemption of international division; rulings made on controverted issues, final order on approval deferred, and exemption granted subject to conditions.

APPEARANCES: Gordon B. Tweedy, Walter Freedman, and Milton H. Cohen, of the Public Utilities Division of the Commission; Reid & Priest, by Frank A. Reid, A. J. G. Priest, and N. H. Powell, and Simpson, Thacher & Bartlett, by John F. MacLane, for Ebasco Services Incorporated.

By the COMMISSION: Ebasco Services Incorporated (hereinafter sometimes referred to as "Ebasco" or "declarant" or "applicant"), a wholly owned subsidiary of Electric Bond and Share Company (hereinafter sometimes referred to as "Bond and

Share"), a registered holding company, has filed a declaration and amendments thereto on behalf of its United States Division (including the Design and Appraisal Division),¹ pursuant to Rule U-13-22 promulgated under the Public Utility Holding Company Act of 1935,² for a finding that it is so organized and conducted as to meet the requirements of § 13 (b) of the act, 15 USCA § 79m (b), Ebasco Services Incorporated has also filed an application and amendments thereto on behalf of its International Division,³ pursuant to Rule U-13-4 promulgated under the

¹The declaration was filed also on behalf of Ebasco's then wholly owned subsidiary, Phoenix Engineering Corporation. Since the filing of the original declaration, the latter company has been merged with declarant and is now called the Design and Appraisal Division. See *infra*.

²The relevant provisions of Rule U-13-22 are as follows:

"(b) A finding by the Commission that a subsidiary company of a registered holding company (other than a mutual service company) is so organized and conducted, or to be conducted, as to meet the requirements of § 13 (b) of the act with respect to reasonable assurance of efficient and economical performance of services or construction or sale of goods for the benefit of associate companies, at cost fairly and equitably allocated among them (or as permitted by rule U-13-31), will be made only pursuant to a declaration filed with the Commission on form U-13-1, as specified in the instructions for that form, by such company or the persons proposing to organize it.

"(d) Within a reasonable time after the filing of a declaration with respect to the organization and conduct of business of a subsidiary service company, the Commission shall, after notice and opportunity for hearing, enter an order finding that the company's organization and conduct of business meet the requirements of § 13 (b) of the act, or refusing so to find, or otherwise disposing of the declaration."

³A similar application under Rule U-13-4 was filed concurrently by Ebasco International Corporation, whose outstanding capital stock is wholly owned by Ebasco. At the time, it was proposed that Ebasco International Corporation succeed to the business presently carried on by the International Division of Ebasco. For that purpose a declaration and applications on Forms U-6B7-1, U-10-1, and U-10-2 were filed contemporaneously, seeking our approval of the transfer by Ebasco to Ebasco International Corporation of all the property and net assets used by the International Division of the former in exchange for common stock of the latter. Thereafter, Ebasco proposed to transfer to Bond and

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act,⁴ for exemption from the standards established by § 13 and the rules and regulations promulgated thereunder relating to the performance of service, sales, and construction contracts for foreign associate companies.

Section 13 (b) of the act, *supra*, to which both the declaration and application are directed, provides:

"After April 1, 1936, it shall be unlawful for any subsidiary company of any registered holding company . . . by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to enter into or take any step in the performance of any service, sales, or construction contract by which such company undertakes to perform services or construction work for, or sell goods to, any associate company thereof except in accordance with such terms and conditions and subject to such limitations and prohibitions as the Commission by rules and regulations or order shall prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers and to insure that such contracts are performed economically and efficiently for the benefit of such associate companies at cost fairly and equitably

allocated among such companies. This provision shall not apply to such transactions as the Commission by rules and regulations or order may conditionally or unconditionally exempt as being necessary or appropriate in the public interest or for the protection of investors or consumers, if such transactions (1) are with any associate company which does not derive, directly or indirectly, any material part of its income from sources within the United States and which is not a public utility company operating within the United States, or (2) involve special or unusual circumstances or are not in the ordinary course of business."

The declaration and application were consolidated for the purpose of hearing, and after appropriate notice, public hearings were held thereon. No member of the public nor any representative of a public body requested opportunity to be heard. A trial examiner's report was waived. Briefs were submitted and oral argument was presented to the Commission.

The Factual Background

From 1907 to 1935 Electric Bond and Share Company rendered services to the operating and holding companies in its system. As the number of

Share all the common stock of Ebasco International Corporation in exchange for a like par amount of the common stock of Ebasco, which stock was then to be canceled by Ebasco. We will at this time reserve jurisdiction with respect to these applications and declaration.

⁴ Rule U-13-4 provides in part:

"(a) Any subsidiary company of a registered holding company, which subsidiary is or is about to become engaged in the performance of any service, sales or construction contract for any associate company which does not derive, directly or indirectly, any material part of its income from sources within the United States and which is not a public utility company operating within the United States,

may make application to the Commission for exemption, in whole or in part from the standards established by § 13 (b) of the act and the rules and regulations promulgated thereunder, relating to the performance of any service, sales, or construction contract for such associate companies.

"(c) Upon filing such an application in good faith, the applicant shall be entitled to a temporary exemption from all provisions of § 13 (b) of the act, and the rules and regulations promulgated thereunder, as to which an exemption is sought, pending action by the Commission upon the application."

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associate companies increased, Bond and Share established in New York a personnel whose services covered every ramification of public utility activities. Under service contracts entered into by Bond and Share with its subsidiary holding and operating companies, each client company paid a regular fee equal to a fixed percentage of its gross revenues and a special fee for particular services. The combined fees produced very substantial profits for Bond and Share.⁶

For the purpose of taking over the performance of these service contracts, Ebasco Services Incorporated was organized in November, 1935,⁶ under the laws of New York with an authorized capital of \$2,600,000. All of Ebasco's capital stock was subscribed for, and is now held by Bond and Share. As consideration for the capital stock, Bond and Share transferred to Ebasco the following assets, representing substantially all the assets previously used by Bond and Share in connection with its servicing activities:

Cash	\$1,000,000.00
1,000 shares of capital stock of Two Rector Street Corporation	790,000.00
1,850 shares of capital stock of Phoenix Engineering Corporation	185,000.00
10,000 shares of the capital stock of Empresas Electricas Brasileiras, S. A.	55,000.00
Loan agreement between Electric Bond and Share and Empresas Electricas Brasileiras, S. A. (principal amount)	368,923.42
Furniture, fixtures, and equipment	201,076.58
Lease agreement with respect to the premises at No. 2 Rector Street	No value
Total	\$2,600,000.00

Since that time services have been rendered by Ebasco⁶ to operating companies in the Bond and Share system in the United States⁹ and to foreign subsidiaries of American & Foreign Power Company Inc. (hereinafter sometimes referred to as "Foreign Power"),¹⁰ an associate company.¹¹ The principal offices of Ebasco have remained in New York, and its personnel is virtually the same as that of the prior servicing division of Bond and Share.

Phoenix Engineering Corporation

Services are not rendered to companies in the American Gas and Electric Company System. Such companies receive services from American Gas and Electric Service Corporation. Re American Gas & E. Service Corp. 5 SEC —, Holding Company Act Release No. 1528, May 15, 1939. American Gas and Electric Company has filed an application pursuant to § 2 (a) (8) of the act, 15 USCA § 79b (8), for an order declaring it not to be a subsidiary of Electric Bond and Share Company. The application is pending.

¹⁰ Besides the Foreign Power group, Ebasco services a few other foreign companies.

¹¹ American & Foreign Power Company Inc. filed an application pursuant to §§ 3 (a) (5) and 3 (b), 15 USCA § 79c, for exemption from the act as a holding company and as a subsidiary of Electric Bond and Share Company. The Commission ordered certain conditional and unconditional exemptions. Re American & Foreign Power Co. 5 SEC —, Holding Company Act Release No. 1847, December 20, 1939.

⁶ Summary Report of Federal Trade Commission on "Utility Corporations" (1935) Part 72-A, pp. 616-621.

⁶ This occurred after passage of the Public Utility Holding Company Act, but before its effective date.

⁷ The assets, with the exception of the furniture, fixtures and equipment, either were carried on Ebasco's balance sheet at the same figure as they appeared on the balance sheet of Bond and Share or were written down during the course of the transfer from Bond and Share's books to Ebasco's. The furniture, fixtures, and equipment account was carried at no value on Bond and Share's books prior to the transfer.

⁸ Except for the amount of fees, the current service contracts are substantially the same as contracts previously in effect between Bond and Share and its serviced clients.

⁹ Service contracts between Bond and Share and its subsidiary holding companies were canceled. These subholding companies and Bond and Share have acquired their own service personnel.

SECURITIES AND EXCHANGE COMMISSION

(hereinafter sometimes referred to as "Phoenix"), whose capital stock was acquired by Ebasco from Bond and Share, functioned as the engineering and construction division of Ebasco until October, 1939. On the latter date it was merged into Ebasco and its functions were taken over by the Design and Appraisal Division of Ebasco.¹²

Effective January 1, 1938, the operations of Ebasco were segregated into the United States Division (including the Design and Appraisal Division), which renders services to client companies within the United States¹³ and the International Division, which renders services to subsidiaries of Foreign Power operating in thirteen foreign countries.¹⁴ The stated purpose of this segregation is to permit the accurate separation of the cost of rendering services to domestic and foreign companies. Each division has its own personnel, furniture, equipment, and bank accounts and maintains its own set of books.¹⁵ As at August 1, 1939, the United States Division (including Phoenix) employed 507 per-

sons at a total annual salary of \$1,990,963 and the International Division employed 160 persons at a total annual salary of \$697,653. For the year ending July 31, 1939, the United States Division (including Phoenix) had a total income (pro forma) of \$3,355,169.57 as compared with \$1,646,234.85 for the International Division. Ebasco contends that since April 1, 1938,¹⁶ services to the domestic client companies have been rendered by the United States Division at cost.

Organization of United States Division

The United States Division of Ebasco is organized on both a regional and departmental basis. It is divided into the following fourteen departments: administration, operating, accounting, corporate, treasury, secretarial, sales, engineering, rate, insurance, tax, budget, statistical, and design and appraisal division.¹⁷ All the client companies are segregated into five regional groups: Northwest, Southwest, North Central, Southeast, and Gas.

At the head of each regional group

and Appraisal Division. The General Division, to which is assigned a capital of \$50,000, maintains books designed to serve as a control of the accounts of the corporation as a whole. The Design and Appraisal Division, while considered from an operating standpoint to be a department of the United States Division, is a separate and distinct division from an accounting standpoint and has its own books, personnel, office space, etc.

¹² The decision upholding the registration requirements of the act was handed down March 28, 1938. *Electric Bond & Share Co. v. Securities and Exchange Commission*, 30 US 419, 82 L ed 936, 22 PUR(NS) 465, 5 S Ct 678, 115 ALR 105.

¹⁷ In addition, Ebasco has under retained the law firm of Reid & Priest, the services of which are available to Ebasco's clients in connection with legal matters pertaining to them.

¹⁸ The activities of the Gas Group are

¹² Re Ebasco Services, 5 SEC —, Holding Company Act Release No. 1759, October 23, 1939.

¹³ There are some thirty-three principal operating companies in the United States receiving Ebasco services.

¹⁴ Major engineering and construction work is performed for foreign associates by the Design and Appraisal Division of the United States Division, except that in Chile, construction services to client companies are rendered by Compania Constructora del Pacifico, and in Brazil, services are performed by Empresas Electricas Brasileiras, S. A. The latter two companies are subsidiaries of Ebasco, and for bookkeeping purposes are treated as if they were subsidiaries of the International Division of Ebasco.

¹⁵ While Ebasco is organized from an operating standpoint on a two-division basis, from an accounting standpoint four divisions are recognized, the two additional divisions being the General Division and the Design

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is an "operating sponsor" who supervises the services rendered by Ebasco to companies in that group, maintains constant contact with the operating companies, and assists the vice president in charge of operations in directing the general functioning of Ebasco. In addition, each regional group has engineering, sales, accounting, statistical, rate, tax, and budget department sponsors as well as a law sponsor assigned to it by the law firm of Reid & Priest.¹⁹ These department sponsors devote all their time to matters pertaining to the client companies in their regional groups. The operating and departmental sponsors spend part of their time in the field, and are continuously "pooling information" obtained from the serviced companies.

In charge of each department is a "department head." A few of the departments also have "department consultants," whose functions differ from those of the department sponsors in that they are concerned generally with the services of the particular department for all client companies rather than for any particular group of companies.

The Design and Appraisal Division provides special, unusual, or occasional design, appraisal, and construction services on request. Its services differ from those of the Engineering Department of the United States Division in that the latter performs general engineering and purchasing services in connection with the day-to-day operating problems of the utility business, while the former performs the major engi-

neering and construction work required only on occasion.

In support of its declaration, Ebasco sought to prove that its principal employees have acquired a detailed familiarity with the problems of the client companies and that it performs supervisory and technical services efficiently and economically for the benefit of its serviced associate companies and at a saving to them over the cost of comparable services by outside companies or by their own personnel.

Organization of International Division

The International Division of Ebasco is organized on a regional and departmental basis similar to that of the United States Division. The division is composed of the following departments: administration, operating, accounting, engineering, sales, rate, general, tax, budget, and corporate, statistical and secretarial, treasury, and insurance and safety. In addition, the services of the law firm of Reid & Priest and the Design and Appraisal Division are available to the client companies of the International Division. Services of the Design and Appraisal Division may be obtained under an arrangement whereby the International Division acting as intermediary, will request them and be billed therefor. The functions of the operating sponsors, and department heads and sponsors, of the International Division are similar to those of persons holding equivalent positions in the United States Division.

largely, though not exclusively, confined to the operations of the United Gas Corporation and its subsidiaries.

¹⁹ The Corporate, Secretarial, Treasury, and Insurance Departments have no department sponsors.

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In support of its application, Ebasco offered evidence that its International Division rendered services solely to companies operating in foreign countries and that its serviced associates did not derive, directly or indirectly, any material part of their respective incomes from sources within the United States. It was also stated that the International Division did not propose to render services to companies operating in the United States. Opinion testimony was offered to the effect that the International Division performed services efficiently and economically for the benefit of foreign associate companies at a cost less than that which they would have to pay for comparable services by outside competitors, if any, or by their own personnel.

Cost Allocation and Charges

United States Division

As required by § 13 (b) of the act, 15 USCA § 79m (b), and Rule U-13-31 promulgated thereunder, the United States Division proposes to render services to associate companies at cost. This Division does not, and does not intend, to render services, at present, to nonassociate companies.²⁰ The general principle pursuant to which cost will be allocated to associate companies is that all expense items will be charged direct²¹ in so far as they can be identified and related to particular transactions, without excessive effort or expense. Costs will

²⁰ Reservation has been made that the United States Division may render services to nonassociate companies. In the event that such services are rendered, payroll costs of employees assigned thereto will be determined accurately, and a sufficient percentage added for overhead to assure at least recovery of costs incurred.

be allocated on the following basis.²²

All employees, other than executives, department heads, sponsors, and their respective assistants, and clerical help, will keep daily time records as a basis for direct charges for time spent. Where an employee, other than executives, department heads, sponsors, and their assistants, is engaged for a continuous period of one day or longer in work performed for a particular client, a proportionate part of the salary of the employee will be charged directly to that client. Traveling and living expenses of members of Ebasco's organization or of the firm of Reid & Priest when absent from New York, and other expenses incurred in connection with services for a particular client, will be charged directly to that client. The salaries of sponsors (other than operating sponsors) and their assistants assigned to regional groups will be charged to each client within the original group in the ratio of the "operating revenues" of each client to the "operating revenues" of all clients within that regional group.

All other expenses, including the salaries of executives, department heads, operating sponsors, and other employees, will be charged to each client on the basis of the ratio of the "operating revenues" of such client to the total "operating revenues" of all client associate companies. In computing the amount of the indirect charges to be apportioned to each com-

²¹ It is estimated that roughly 50 per cent of the total expenses of Ebasco's United States Division (including the Design and Appraisal Division) will be charged directly to the particular recipient of services.

²² A different method, discussed hereafter, is to be adopted for the Design and Appraisal Division.

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pany, the operating revenues of the particular company (with the exception referred to hereafter) will first be adjusted to eliminate intercompany items and then weighted on the following basis:

When such revenues are \$1,000,000 per month or less	100%
For the next \$1,000,000 of monthly revenues	80%
For the next \$1,000,000 of monthly revenues	60%
For the next \$1,000,000 of monthly revenues	40%
For all additional monthly revenues ...	20%

Operating revenues are thus weighted on the theory that it costs proportionately less to service a larger company than a smaller company. The percentage graduations are purely a matter of judgment.

Where a client company owns subsidiaries this method of apportioning indirect charges is modified to the extent that charges for services rendered to both the parent company and to its subsidiaries will be billed to the parent alone and will be based on the consolidated weighted operating revenues of the group, after eliminating intercompany transactions. The parent company will reallocate the charges on the basis of operating revenues of each company, after eliminating intercompany items.²³

Bond and Share and its principal holding company subsidiaries (other than holding operating companies which are clients of Ebasco) have their own personnel and ordinarily require few, if any, services from Ebasco. If any services are rendered to these companies by any employee of the United States Division (other

than those officers and employees who also receive compensation from Electric Bond and Share Company), direct charges therefor will be made on the basis of the payroll cost of the time spent on such services plus an appropriate additional charge for indirect or overhead costs.

Design and Appraisal Division

The Design and Appraisal Division will also render services at cost to associate companies. This division performs all services for clients under a special form of order and all construction services are performed under special contract. All employees of this division, except clerical, accounting, and administrative employees, keep daily time records in hourly units, on the basis of which a direct salary charge for services rendered is made. Expenses such as traveling and living expenses of employees and telephone toll calls and other similar expenses, when incurred for a specific client, are billed at actual cost to that client. All other costs, including salaries of clerical, accounting, and administrative employees, that cannot be properly charged direct to work orders are treated as indirect expenses. These are distributed on the basis of the ratio of (a) the direct salary charges made in a particular month with respect to the work orders of a particular client to (b) the direct salary charges made in such month with respect to all the active work orders. Services performed by the Design and Appraisal Division for the International Division of Ebasco, or for Bond

²³ Ebasco has agreed that when it files its Annual Report on Form U-13-60, it will furnish to the Commission, in such reasonable detail as may be required, information disclos-

ing both the amounts and bases of distribution of all fees charged by the United States Division for and in connection with services rendered to subsidiaries of client companies.

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and Share or any of its associate holding companies, will be billed to them at cost on the same basis as the other client companies.

International Division

Previously, the Commission determined that the requested exemption by the International Division from the "cost" standard of § 13 (b), *supra* could not be found "appropriate . . . for the protection of investors" in the outstanding securities of Foreign Power²⁴ unless Ebasco undertook to turn over to Foreign Power all profits over and above the "cost" of performing services for the foreign subsidiaries of Foreign Power. Thereafter a contract was drafted²⁵ under which Ebasco will pay to Foreign Power, or Foreign Power will reimburse Ebasco for, as the case may be, the "difference" between (1) the operating expenses of the International Division, including all operating costs, taxes, reserve accruals, and a return of 6 per cent per annum on the \$700,000 capital assigned to said division, and (2) the compensation payable by the subsidiaries of Foreign Power.²⁶ Such "difference" is to be determined quarterly beginning with the quarter ending February 29, 1940, and the amount thereof is to be paid within forty-five days after the end of the quarterly period.

²⁴ Substantial amounts of Foreign Power securities are held by investors in the United States. Re American & Foreign Power Co. (1939) 5 SEC —, Holding Company Act Release No. 1847.

²⁵ This contract is to become effective as of December 1, 1939, but is not to be actually executed until disposition of this application for exemption.

²⁶ Emprezas Electricas Brasileiras is a wholly owned subsidiary of Ebasco which performs service contracts for Foreign Power subsidiaries in Brazil. In performing these

The issues between counsel to the Public Utilities Division and Ebasco were limited to five matters in the briefs and at oral argument. We proceed to pass upon these five points.

The Reserve for Contingencies

[1] Since April 1, 1938, a "Reserve for Contingencies" has been established on the books of the United States and Design and Appraisal Divisions. Accruals are being made to this account in the annual amount of \$124,000,²⁷ and such accruals have been charged as part of the "cost" of performing services. As of July 31, 1939, the total amount thus accumulated was \$182,333.33. It is proposed to continue making these accruals in the future.

The original declaration in this proceeding filed by Ebasco in May, 1938, contained a statement to the effect that such accruals were being made, but gave no indication as to their purpose. In an amendment filed on June 30, 1939, it was stated that the reserves were being accumulated to provide for "employees' welfare costs, employees' separation costs and other costs incident to operation under regulations of the Securities and Exchange Commission now effective or which may be imposed by future rules and regulations." During the course of the hearing on the declaration, in September,

contracts, Emprezas utilizes the services of Ebasco. Under the proposed contract, any dividends paid by Emprezas to Ebasco out of earnings subsequent to the effective date of the contract are to be included in the computation of "compensation payable."

²⁷ Accruals for the United States Division have been at the rate of \$100,000 a year; accruals for Phoenix were \$4,000 a month through November, 1938, \$3,000 for the month of December, 1938, and \$2,000 a month thereafter.

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1939, it was testified for the first time that the funds accumulated in the reserve were to be specifically used for a pension fund, and a similar statement was made in an amendment to the declaration filed October 10, 1939. In the meantime, a stipulation was filed to the effect that no part of the existing reserves, or of future accruals thereto, would be transferred to surplus or otherwise made available for payment of dividends.

No actual pension plan, however, has ever been put into operation.²⁸ And although the subject purportedly has been considered from time to time by company officials, no definite plan has been formulated or submitted to this Commission. There is no indication as to the nature of the plan, the sums involved, the identity of the beneficiaries, or the methods of distributing benefits among the company's officers and/or employees.

A similar reserve denominated "General Reserve" is presently being accumulated ostensibly for the same purpose by the International Division at the annual rate of \$60,000.²⁹ Accruals subsequent to December 1, 1939, the fate of introducing a cost basis for foreign services, are challenged by counsel for the Public Utilities Division. We believe that the same factors which govern our consideration of the Reserve for Contingencies of the United States Division are applicable to the General Reserve of the International Division.

In passing upon a declaration for approval under § 13 (b), *supra*, we must determine whether the declarant is so organized and its business so con-

ducted, that services to associate companies will be performed "economically and efficiently for the benefit of associate companies at cost, fairly and equitably allocated among such companies." In discharging that function we must carefully scrutinize every significant item of expense contributing to the "cost" which is passed on to associate companies, in order to determine whether such expenditure contributes to economical and efficient operation for the benefit of the associate companies. Obviously, such a determination cannot be made with respect to a pension plan which has not yet been formulated. Accordingly, we cannot regard the accruals for the indefinite pension plan as proper elements of "cost" which may be included in charges for services to associate companies. We believe that the reserves represent improper charges which should be refunded to the operating companies and Foreign Power and that further accruals to these reserves should cease.

Declarant has urged, however, that we defer an order to this effect until it has submitted a definitive pension plan for our approval. Whether any pension plan for Ebasco's employees would be a proper expense includable in the cost of servicing associate companies has not been argued before us in this proceeding, nor do we here determine it. Since, however, these reserves are already accumulated, and further delay of the disposition of these funds for a short time will not materially harm the operating companies, their investors, or consumers, we shall accord declarant a period of six-

²⁸ There are no pension plans in effect elsewhere in the Bond and Share system.

²⁹ This reserve totaled about \$95,000 as of July 31, 1939.

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ty days in which to present for our approval a definite pension plan for its employees. If a plan is not submitted within that period, or if a plan is submitted within that period and subsequently disapproved, Ebasco will be obliged to return these accruals to its client companies in equitable proportion to the amount paid in by them, and to forego further accruals. The accruals in question will date from April 1, 1938, for the United States and Design and Appraisal Divisions, and from December 1, 1939, for the International Division.

Two Rector Street Corporation

[2, 3] For the alleged purpose of providing suitable space for its servicing activities, Bond and Share, in January, 1925, purchased the outstanding common and preferred stocks of Two Rector Street Corporation, a corporation owning an office building at 2 Rector street in New York city.³⁰ The total cost to Bond and Share of these securities, including costs of \$57,754.80 said to have been incurred in connection therewith, was \$2,457,754.80. In June, 1925, the 5,000 shares of preferred were redeemed at \$110 per share, leaving \$1,907,754.80 as the cost of the common stock. In November, 1935, this common stock was transferred to Ebasco and recorded on its books at a value of \$790,000 on the basis of an independent appraisal made at that time. The property of Two Rector Street Corporation is subject to a mortgage in the face amount of \$4,000,000 held by

The Prudential Insurance Company of America, maturing April 1, 1945, and bearing interest at the rate of 5 per cent per annum. The mortgage is being amortized at the rate of \$80,000 per year; as at June 30, 1939, the principal amounted to \$3,330,000.

In connection with its acquisition of the stock of Two Rector Street Corporation, Ebasco assumed a lease, previously entered into by Bond and Share, under which Ebasco agrees to pay rent in an amount which, with rents received from other tenants, will give to Two Rector Street Corporation \$260,000 a year in excess of operating expenses, including taxes, but not including interest and amortization of mortgage principal. The present annual requirement for interest and amortization of principal is \$246,500, and this amount will decrease progressively as the principal amount is reduced by \$80,000 per year. The lease expires April 1, 1946, and may not be modified or canceled without the consent in writing of the mortgagee.

The office building houses the principal offices of Ebasco, Bond and Share, and the major holding company subsidiaries of Bond and Share. Of its total rentable area of 268,000 square feet, Ebasco occupies about 114,000, the holding companies about 36,000, and outside tenants about 73,000.³¹ The associate companies³² pay rent at the rate of \$3 per square foot. Outside tenants pay various rentals depending upon the desirability of the space occupied, the average

³⁰ It also owns a small tract of land at 94½ Greenwich street, allegedly bought to protect the easement for light and air.

³¹ The figures are as of April 30, 1939, except for the outside tenants. The latter figure

is as of September 29, 1939.

³² A new lease is to be executed whereby the International Division will pay rent at the rate of \$3 per square foot.

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being about \$2 per square foot. The rental paid by Ebasco for the twelve months ended April 30, 1939, was approximately \$2.78 per square foot; its annual rental has been less than \$3 per square foot at all times since it assumed the lease in 1935.

Counsel for the Public Utilities Division contend that ownership of the capital stock of Two Rector Street Corporation and the leasing arrangement have put Ebasco into the real estate business, and that this is incompatible with the efficient and economical performance of service contracts for the benefit of associate companies at cost within the meaning of § 13 (b), *supra*. When rentals are poor or building expenses are high, Ebasco is required by the lease to make up the difference. This expenditure in turn is passed on to Ebasco's client companies. In this way the cost of services is said to be geared to the fluctuations of a real estate venture.

We are not disposed to hold that ownership of a building to house a service company per se contravenes the provisions of § 13 (b). Whether ownership of a building may be permitted depends upon the particular facts of each case. On the basis of the present record, we cannot find that stock ownership of Two Rector Street Corporation by Ebasco prevents or seriously impedes the efficient and economical performance of service contracts for the benefit of associate companies at cost. In reaching this decision, we rely on declarant's stipulation that in the event of any disposal or write-down of the Two Rector Street Corporation investment, no loss incident thereto is to be included in the

cost of rendering services to United States client-associate companies.

The lease arrangement gives rise to a more difficult question. We do not look with favor upon an arrangement, such as Ebasco has entered into, under which the amount of its rent is subject to the vicissitudes of the real estate market. For several reasons, however, we are disinclined to disturb the lease arrangement in question. In the first place, the lease was entered into by Bond and Share prior to the passage of the act and was assumed by Ebasco because it was deemed that the primary reason for the lease arrangement was to afford office space for the activities of the Bond and Share servicing unit. In the second place, it appears that Ebasco has enjoyed reasonable rentals since it assumed the lease; its rent has, in fact, been lower than that of its associate companies. In the third place, the lease will run for only about six more years, and does not, therefore, involve a long-term obligation.

Capitalization of Ebasco

The capitalization of Ebasco, amounting to \$2,600,000, has been segregated among its respective divisions as follows:

United States Division	*\$1,665,000
Design and Appraisal Division ...	185,000
International Division	700,000
General Division	50,000
	\$2,600,000

* Includes \$790,000 investment in Two Rector Street Corporation.

A 6 per cent return on capital in the amount of \$1,760,000³³ is includ-

³³ The capital subject to the 6 per cent return does not include \$790,000, representing the investment in Two Rector Street Corporation, and \$50,000 assigned to the General Division.

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ed in the cost charged to associate companies of Ebasco, and is transmitted to Bond and Share for use of the capital. Counsel for the Public Utilities Division contend that this return exceeds the return allowed by Rule U-13-32 (a), which provides:

" . . . a transaction shall be deemed to be performed at not more than cost if the price (taking into account all charges) does not exceed . . . *reasonable compensation for necessary capital* procured through the issuance of capital stock. . . ." (Italics supplied.)

The contention is that the rule is contravened because: (1) the amount of capital in each division of Ebasco and/or Ebasco as a whole exceeds the "necessary capital" provision; and (2) a 6 per cent return on the capital employed in domestic servicing³⁴ exceeds the "reasonable compensation" provision.

United States Division

Of the \$875,000 capital assigned to the United States Division (excluding \$790,000 invested in Two Rector Street Corporation on which no return is sought), \$115,644.38 represents office furniture and miscellaneous equipment (after deducting the depreciation reserve of \$52,395.20) and \$24,276.51 represents unamortized leasehold expenses. This leaves approximately \$735,000 available in cash, accounts receivable, and other

current assets for the conduct of the business of the division.³⁵ Based on the estimated budget for the year ending October 31, 1940, \$735,000 represents slightly over three months' expenses of operations.

The record indicates that the average daily cash balance of the United States Division for the year ended July 31, 1939, exceeded \$700,000, and that during this same period the minimum balance for any single day was over \$583,000. Since the monthly expenses of this division are estimated in the budget for the year ending October 31, 1940, at approximately \$230,000, the average cash balance appears to equal slightly over three months' expenses of operations. Disposition of the Reserve for Contingencies, when effectuated, will account for a reduction of cash in the amount of \$133,333.33. Ebasco contends that the proposed method of allocating cost will involve additional examination of time sheets and other records, and increase by approximately one and one-half months the present one-month average interval before expenditures are recovered. Counsel for the Public Utilities Division dispute that the lag between disbursement and receipt will be as great as two and one-half months.

Design and Appraisal Division

Of the \$185,000 capital assigned to the Design and Appraisal Division,

current liabilities of \$83,765.77, which leaves \$809,152.01 as the working capital of the division. The difference between the \$735,000 figure arrived at above and the working capital figure of \$809,152 is attributable to deferred charges, prepayments, and to the existence of a Reserve for Contingencies, previously mentioned, which declarant assertedly plans to utilize in the near future.

³⁴ Because of the peculiarities of the foreign servicing business, no issue has been taken on the rate of return on capital assigned to the International Division.

³⁵ The figures used in this section are pro forma as of July 31, 1939, unless otherwise indicated. The pro forma balance sheet for the United States Division as of July 31, 1939, indicates current assets of \$892,917.78 and

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\$13,440.30 is invested in office furniture and miscellaneous equipment, after deducting the depreciation reserve in the amount of \$7,195.26. Based on the estimated budget for the year ending October 31, 1940, the remainder of approximately \$172,000 represents about four months' average expenses of operations. The declarant seeks to justify this amount of capital on the ground, inter alia, that the work of this division fluctuates considerably, thereby necessitating ample liquid capital reserves. Counsel for the Public Utilities Division maintain that other service companies which engage in similar activities have not claimed the need for nearly so high a ratio between working capital and monthly expenditures for their business as a whole, and no need is shown for the Design and Appraisal Division maintaining working capital in excess of the average of other companies.

International Division

Of the \$700,000 capital assigned to the International Division, \$33,579 is invested in furniture and equipment (depreciated), and \$58,100 is invested in two wholly owned subsidiary companies.³⁶ This leaves \$608,321 available for the conduct of the servicing business, which is equivalent to over six months' average operating expenses. The declarant contends that this large amount of capital is justified because: (1) operations of

this division are subject to sharply fluctuating foreign exchange rates and restrictions on foreign exchange; (2) about \$300,000 of capital is tied up in accounts receivable which are not currently collectible because of the inability to obtain dollar exchange.³⁷ Counsel for the Public Utilities Division concede that somewhat larger amounts of capital may be necessary for foreign operations than for domestic. But it is argued that the new agreement whereby Foreign Power guarantees payments by its subsidiaries to Ebasco³⁸ will considerably alleviate the difficulties of servicing foreign companies. Moreover, it is contended that the \$300,000 in accounts receivable was on Ebasco's books on December 1, 1939, the date as of which Ebasco undertook to turn over to Foreign Power the profits of its foreign servicing business, and has no connection with the period of operation at cost.

Combined Divisions

Viewing Ebasco as a whole rather than as a number of divisions, it appears that Ebasco proposes to include in the "cost" of servicing, a 6 per cent return on capital aggregating \$1,760,000, or \$105,600 per year. Excluding from the total of \$1,760,000 the amounts of \$162,663 representing furniture and equipment, \$32,365 of unamortized leasehold expenses, and approximately \$300,000 on which a return is paid although the funds are

³⁶ Empresas Electricas Brasileiras, S. A.; Compania Constructora del Pacifico.

³⁷ As of October 31, 1939, the balance due from Empresas Electricas Brasileiras, S. A. was \$261,810, and balances aggregating about \$55,000 were owed by other companies.

The Ebasco account is increasing continually due to the lack of exchange. The Comp-

troller of Ebasco stated that he believed that the Empresas account was a "good account." Assuming that New York exchange could be obtained, Empresas was said to have Brazilian currency on deposit in Brazilian banks in excess of the debt due Ebasco.

³⁸ See *infra*.

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tied up in old accounts receivable, there remains \$1,264,972 available for operations of all divisions of Ebasco except the General Division. This is equal to expenses for 3.47 months. If the \$300,000 tied up in accounts receivable in the International Division is included, the capital available for operations will equal 4.3 months' expenses.

[4] Our rules specifically prescribe that a return on capital is permissible only if it is "necessary capital." The limitation was imposed in order to prevent circumvention of the cost standards by capitalizing a service company at an excessive figure and by claiming a return on the excessive capital. Plainly, if a holding company could obtain a return on its idle funds by transferring them to a service company where they contribute nothing to the performance of services, the cost provision of § 13 (b), *supra*, would be rendered nugatory.

[5] The determination of what constitutes "necessary capital" in a particular service company involves the exercise of sound business judgment. Naturally, we accord considerable weight to the opinions of company officers who are charged with the duty of making such determinations. But it is clear that the judgment of company management is not conclusive; that judgment must be examined in the light of available standards. Among the relevant factors which should be considered in determining what constitutes "necessary capital" are: investments in assets necessary to the conduct of business, and working capital in the light of average monthly expenses, the normal lag between expenditures and recovery

thereof, prospective variations from the norms, and the experience of comparable organizations.

[6] Data as to the ratio between working capital and average monthly expenses are available from the records of 19 prior service company cases before this Commission. In only 2 cases was the ratio as high as 3 to 1; one of these cases involved only \$50,000 of capital and the other involved no claim for a return on capital. In the other 17 cases, the proposed working capital was sufficient to cover the following number of months' expenses, respectively: $1\frac{1}{2}$ to 2; 2; 1.4; 2.48; 2.5; $1\frac{1}{3}$; $2\frac{1}{3}$; 2; 2; $2\frac{1}{2}$; 2; 2; 1.8; 1; $2\frac{1}{2}$; 2; and 2. In 10 of these 17 cases, no allowance for return on capital was requested, so that no question was raised as to the maximum amount of working capital. Ebasco has not demonstrated that its need for capital is any greater than that of other service companies.

It may be conceded that some delay in the recovery of expenditures will result from the introduction of the new system of direct charges in the United States Division. We find no basis in the record, however, for the assumption that the present one-month average interval before expenditures are recovered will be increased to approximately two and one-half months. Making due allowance for some increase in the delay in recovery of expenditures under the new system, and taking into account the other factors, we believe that a ratio of $2\frac{1}{2}$ to 1 between working capital and average monthly expenses is ample to assure a sufficient amount of working capital. A somewhat higher ratio is warranted in the case of the

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International Division by the special circumstances of foreign servicing.

[7] A further question is whether 6 per cent of the working capital represents "reasonable compensation." One factor in making this determination is the extent of risk involved; as a rule, the smaller the risk, the smaller the justifiable return. Ebasco, it appears, has suffered no losses on accounts receivable during the past several years. Indeed, it has not been found necessary even to set up a reserve for such losses. The risks which have been assumed do not, therefore, appear to be substantial. Further light upon the problem is shed by a comparison of rates of return paid by other service companies.³⁹ Of 25 service companies, it appears from the public records of the Commission that 13 pay no return whatever on capital; 2 companies pay a return of 4 per cent on capital stock; 4 companies pay a return of 5 per cent; 3 companies pay a return of 6 per cent; and 3 pay interest of 5 per cent or 6 per cent on loans but no return on capital stock. Furthermore, subsidiary operating companies in the Bond and Share system recently have borrowed long-term money at effective interest rates of $2\frac{1}{8}$ and $3\frac{1}{2}$ per cent, which is indicative of the low cost of money on the market at present. These operating companies pay Ebasco service charges for

return on service company capital. Such charges are treated by the operating companies as operating expenses and accordingly are deducted from gross income before the amount available for interest payments is computed. In appraising the relative extent of risk involved, it should be borne in mind that provision is made for payment of service charges in advance of the computation of the amount available for interest. Yet the present charges for return on Ebasco's capital are greater than the prevailing rates of interest at which the operating companies are able to borrow. In the light of the above considerations, we believe that a 4 per cent return for the present more nearly comports with Rule U-13-32 (a), than a return of 6 per cent. In ordering a reduction of the rate of return we are cognizant that the rate may change, depending upon the variable factors that determine the cost of money. Hence, the 4 per cent maximum rate of return which we establish in this proceeding is not to be deemed a permanent and fixed rate of compensation on necessary capital.

Reduction of Ebasco's working capital to $2\frac{1}{2}$ times its average monthly expenditures for the United States and Design and Appraisal Divisions⁴⁰ and reduction of the rate of return upon necessary capital to 4 per cent

³⁹ In *Bluefield Water Works & Improv. Co. v. West Virginia Pub. Service Commission*, 262 US 679, 692, 67 L ed 1176, PUR1923D, 11, 20, 43 S Ct 675, the United States Supreme Court said:

"A public utility is entitled to such rates as will permit it to earn a return on the value of property . . . equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties."

⁴⁰ Adding to the reduced working capital the sums of \$115,000 and \$24,000 invested in furniture and miscellaneous equipment and in unamortized leasehold expenses would leave roughly about \$700,000 as necessary capital upon which the United States Division properly could obtain a return. For the Design and Appraisal Division, addition of \$13,000 invested in furniture and miscellaneous equipment would leave the round sum of \$150,000 as necessary capital upon which a reasonable return could be obtained.

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would result in annual savings of approximately \$25,000 to domestic clients of Ebasco. Reduction of the International Division's working capital to a 3 to 1 ratio⁴¹ would diminish the charges for operating expenses by about \$18,000 annually, thereby increasing the profits which will be returned to Foreign Power under the proposed contract, or decreasing the losses payable to the International Division by Foreign Power. Although these savings superficially appear to be de minimis when spread among numerous client companies, we cannot agree that this sum is not appreciable. It will be noted that resultant savings to domestic client companies and Foreign Power are about \$43,000, which constitutes about 40 per cent of the aggregate amount of return charged by Ebasco on its capital. If 40 per cent of the compensation obtained upon service company capital is excessive, we cannot condone such charges as de minimis. Accordingly, we find that, unless corrected pursuant to the provisions of our opinion, this item will prevent compliance with the standards of § 13 (b), 15 USCA § 79m (b) and the provisions of Rule U-13-32 (a) thereunder.

The Proposed \$250,000 Indemnity Fund

[8] In the proposed contract to place the International Division on a cost basis, there is an indemnification provision, under which Foreign Pow-

er agrees to indemnify the International Division against any and all claims, demands, liabilities, and expenses arising out of its foreign service contracts with subsidiaries of Foreign Power. This agreement of indemnification further requires Foreign Power to advance a fund of \$250,000 to Ebasco, from which the latter may reimburse itself whenever it shall have incurred, in any three months, any loss arising from the servicing of Foreign Power subsidiaries or arising out of the reorganization of any such subsidiaries. If amounts are withdrawn from such fund to reimburse Ebasco, Foreign Power is to deposit additional funds so that the amount in such fund may remain at \$250,000. The fund is to be held by Ebasco in a special bank account and is to be used for no purpose except as set forth above. No interest on the fund is to be paid to Foreign Power.

The record shows that Ebasco has never experienced any losses on its foreign servicing accounts. It has not, in fact, set up a reserve for bad debts against those accounts. In the past, the credit of the foreign client companies has sufficed. To that credit there is now added the guaranty of Foreign Power to save the International Division against any losses on the servicing. Under all the circumstances, it is clear that the proposed fund is unnecessary to insure the International Division's collection of service fees.

⁴¹ Adding the sums of \$33,000 and \$58,000 invested in furniture and equipment and wholly owned subsidiary companies would leave about \$400,000 as necessary capital upon which the International Division properly could obtain a return.

We are aware that the present European War may have caused changes in rates and

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restrictions on foreign exchanges which are not set forth adequately in the present record but which might affect materially our decision with respect to the amount of necessary capital for the International Division. Hence, we are ready to entertain an application by Ebasco for leave to adduce additional material evidence on this subject.

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Ebasco urges, as justification for the \$250,000 indemnity fund, that the current war possibly will clog the exchanges and impede the flow of payments to Ebasco by foreign serviced companies. Under the contract between Ebasco and Foreign Power, settlements will be made every three months. Based on the 1940 budget, the estimated average outlay for a three months' period will be \$304,125. It is likely that only a fraction of this amount would be tied up in any one settlement period through unexpected changes in the exchange and transfer situation. During any settlement, Ebasco may determine whether continued servicing of a particular client is prudent in the light of exchange and other difficulties. This should enable Ebasco to keep losses to a minimum. Such insubstantial risks as may exist appear to be no more than ordinary concomitants of the foreign servicing business.

Ebasco further contends that since Foreign Power companies will receive Ebasco's services at cost, they ought to give something in return, namely, a \$250,000 indemnity fund. The argument is, in our opinion, untenable. The Foreign Power group is obtaining services at cost by virtue of statutory requirement. It need not give anything in return any more than domestic clients of Ebasco which receive services at cost.

In our view, the proposed indemnification fund is unnecessary for the protection of Ebasco, and is detrimental to the interests of investors in Foreign Power, in that it will deprive

Foreign Power of a substantial sum of money which might be used to improve the operating properties of its subsidiaries or loaned out on a favorable interest-bearing basis. We find, therefore, that the \$250,000 indemnity provision is not appropriate for the protection of investors in Foreign Power and contravenes § 13 (b), *supra*.

The Interlocking Officers of Bond and Share and Ebasco

[9-12] When Ebasco was organized, six directors and principal executive officers of Bond and Share (C. E. Groesbeck, chairman of the board; S. R. Inch, president; S. W. Murphy, vice president; W. C. Lang, comptroller; E. P. Summerson, secretary; and A. C. Ray, treasurer) were placed in identical positions⁴³ in the service company, without altering their status in the holding company.⁴³ Their duties, activities, and compensation⁴⁴ remained substantially the same as before the organization of Ebasco, although those activities are now performed on behalf of two companies instead of one, and payment of their compensation is divided between the two companies. The entire servicing organization is coördinated and controlled through those six men.

It was testified that the basis of allocation of salaries of the interlocking officers was suggested or approved in each case by the particular individual involved. Among the factors said to be considered in distributing these salaries were: the time spent on the affairs of each company; the number

⁴³ Only Messrs. Groesbeck and Inch are directors of Ebasco. The executive positions of all six, however, are identical.

⁴⁴ It appears that there are no common of-

ficers between Ebasco and other associate companies in the Bond and Share system.

⁴⁴ There have been certain changes in the period from 1935 to the present.

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of problems arising in connection with the companies served; and the duties normally attached to the position. One of declarant's witnesses stated, however, that the allocations were "somewhat arbitrary" and that it was "difficult . . . to get any fixed accurate division." Under this arrangement, a total of \$305,750⁴⁵ was paid to these six individuals and their office assistants⁴⁶ by Bond and Share, Ebasco, and its subsidiary, Two Rector Street Corporation, in the following proportions:

	Amount Paid	%
Bond and Share	\$133,795	43.76
Ebasco		
United States Division	\$101,115	
International Division	68,440	
	169,555	55.46
Two Rector Street Corporation	2,400	.78
Total	\$305,750	100.00

Counsel for the Public Utilities Division contend that the interlocking officer relationship of Bond and Share and Ebasco violates § 13 (a) of the act, and that that situation precludes compliance with § 13 (b), *supra*. Section 13 (a) of the act provides:

"After April 1, 1936, it shall be unlawful for any registered holding company, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to enter into or take any step in the performance of any service, sales, or construction contract by which such company undertakes to perform services or construc-

tion work for, or sell goods to, any associate company thereof which is a public utility or mutual service company. . . ."

It is contended that the separation between Bond and Share and Ebasco is merely a paper separation, both companies being fused into a single organization exactly as before enactment of § 13. Accordingly, it is urged, Bond and Share is actually engaged in the servicing business in violation of § 13 (a). The further argument is made that allocations of salary expenses of interlocking officers are necessarily "arbitrary" and, hence, that it is impossible for Ebasco to meet the cost standards prescribed by § 13 (b). Both of these contentions are disputed by declarant.

The act does not deal specifically with the problem of common personnel between the registered holding company and service company. It is clear, however, that if such interlocking relations operate to defeat the purposes of § 13, the Commission must regulate or prohibit those relations. Obviously, the express mention of interlocking relations in other parts of this statute and in other statutes cannot be construed as impliedly prohibiting this Commission from administering § 13 in the light of its purposes.

Section 13 (a) plainly evidences a congressional intent to prohibit intrasystem servicing by registered holding companies. One of the principal rea-

⁴⁵ For the year ending July 31, 1939, the total expenses pro forma of the United States Division (including Design and Appraisal Division) aggregated \$3,311,311.91, and those of the International Division were \$1,176,503.13.

⁴⁶ In addition to the six principal officers, there are ten persons who are employed as 35 PUR(NS)

secretaries or office assistants to the six officers, and whose salaries are allocated between the two companies in accordance with the allocation of the salary of the principal officer served. A total of \$272,400 is paid to the six common officers, and the remaining \$33,350 is paid to their assistants.

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sons for compelling a divorcement of holding company business from servicing business was to remove the barrier to ascertaining the cost of services which necessarily existed where holding company functions were commingled with servicing activities. This reason is set forth in the Senate Report which accompanied S. 2796, one of the bills which preceded the final act. After discussing the purpose of the proposed § 13 of the bill to institute a cost basis for intrasystem servicing, the report stated:

"The objection of this section [13] is not merely to require the contracts to be performed at cost but at the same time to avoid the almost impossible and wasteful task of trying to determine what that cost is when operations are commingled with various other activities." (Sen. Rep. No. 621, 74th Cong. 1st Sess. (1935) 36).

The pertinent portion of the bill, to which reference is made in the above report, is similar to that of the final act.

The language in the above report is particularly apposite. The amounts of salary of the common officers and employees allocated to Ebasco become part of its operating expenses and, therefore, enter into the "cost" of performing services for the client associate companies. But the functions of the principal officers of Ebasco are "commingled" with their functions as officers of Bond and Share, and it is an "almost impossible and wasteful task" to ascertain what segment of each of the services of the common officers is for Ebasco, and hence properly included in the "cost" to serviced companies, and what part for Bond and Share, and therefore chargeable

only to it. Each of the officers in question occupies at least two positions: he is an officer of Bond and Share and an officer of Ebasco. Where his duties as an officer of Ebasco, in a particular transaction, begin, and his duties as an officer of Bond and Share end, cannot be determined. That difficulty is inherent in the situation. Bond and Share, as the parent of each of the companies serviced by Ebasco, has an abiding interest in matters pertaining to those companies. In every transaction by Ebasco in which Bond and Share is somehow interested, the officers will be acting in dual capacities—as officers of Bond and Share and as officers of Ebasco. It is unreal to assume that the value of their services to each company can be determined with any degree of accuracy. The same is equally true of the services of any employee whose work entails a commingling of holding company and service company functions.

It is evident that effective regulation pursuant to § 13 (b) is rendered impossible so long as interlocking officers and employees are paid by both the registered holding company and the subsidiary service company. This condition can be remedied in either of two ways: (1) The officers and employees who now hold positions in both companies can sever their relations with either company; (2) Bond and Share might undertake to pay the entire compensation of the common officers and employees.⁴⁷ In either

⁴⁷ The section prohibits a registered holding company from performing any service, sales, or construction contract for associate companies. A service contract is defined in § 2 (a) (19), 15 USCA § 79b (a) (19) as rendering services for a charge. Equivalent definitions of sales and construction contracts

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case, there would be no problem of equitably allocating the cost between Bond and Share and Ebasco. We regard the second alternative as a step toward insuring that the standards of § 13 are met. If this step does not prove effective, we shall have to decide whether complete segregation of directors, officers, and employees between the registered holding company and subsidiary service company may not be necessary to insure economical and efficient servicing for the benefit of associate companies at cost under the act.

We have, in the past, permitted interlocking officers of the holding company and subsidiary service company⁴⁸ in a number of instances where cost allocation was affected thereby. We believe, however, that we were in error in permitting those situations to continue, and that we should not follow those precedents. Hence, we shall require that the interlocking officer and employee relationships of Bond and Share and Ebasco be remedied in accordance with the provisions of our opinion within sixty days from the date of the filing of this opinion.

Conclusions of Law

[13] We are called upon to decide whether the United States Division (including the Design and Appraisal Division) of declarant is so organized and conducted, or to be conducted, as to meet the requirements of § 13 (b) of the act with respect to reasonable assurance of efficient and economical performance of service, sales, or con-

struction contracts for the benefit of associate companies at cost, fairly and equitably allocated among such companies. We have indicated in our opinion that there are a number of situations which prevent compliance with the requirements of the act and rules and regulations thereunder. So long as those situations continue to exist, we are obliged to find that the United States Division of Ebasco is not so organized and conducted as to meet the requirements of § 13 (b) of the act. We hesitate to make an adverse determination on the declaration, however, without previously affording declarant an opportunity to comply with the provisions of our opinion. Hence, we will defer the issuance of a final order on these matters for a period of sixty days from the date of the filing of this opinion during which time declarant may comply with the provisions of our opinion.

In the event that declarant complies with the provisions of our opinion within sixty days from the date of the filing of this opinion, the question will recur whether we can then make an overall finding that declarant complies with the requirements of § 13 (b) of the act. We have examined the record carefully in this proceeding and find that the evidence relating to the efficiency and economy of the servicing activities of declarant consists on the whole of self-serving statements made by declarant's witnesses. Moreover, the issue of efficiency and economy was not touched upon in the briefs or at the oral argument. That this was due to confining the issues to five points with the approval of the Commission does not alter the fact. While the Commission at this time

are contained in §§ 2(a) (20) and 2(a) (21), 15 USCA § 79b (a) (20) (21).

⁴⁸ In this regard we have not differentiated between the mutual service company and the subsidiary service company.

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makes no adverse findings on this subject under § 13 (b), we find that the record is insufficient for the purpose of deciding whether there is reasonable assurance that Ebasco's service, sales, or construction contracts with associate companies will be performed economically and efficiently for the benefit of such associate companies at cost, fairly and equitably allocated among such companies. In finding that the record is inadequate we do not intend any advance implication that Ebasco is not complying with the standards of efficiency and economy set forth in the act. Should declarant comply with the other provisions of our opinion, therefore, we shall order that this proceeding be reopened at a date to be fixed and hearings upon the matters of efficiency and economy of servicing activities be continued. In that event, pursuant to Rule U-13-3 (b) declarant may, to the extent set forth in its declaration, continue to perform service, sales, or construction contracts for associate companies pending final action by the Commission on the declaration. This temporary exemption, however, is conditioned by Rule U-13-3 (b) so that declarant will be required to comply with all applicable provisions of the act and rules and regulations thereunder as if the Commission had approved such declaration. Pending final determination of the declaration, therefore, we conclude that Ebasco's United States Division (including the Design and Appraisal Division) will be entitled to continue its intrasystem servicing business, provided that it complies with the act and rules and regulations thereunder, and the matters set forth in our findings and opin-

ion and order. In this connection we might emphasize that the proposed method of allocating cost for the United States Division should be instituted at once.

[14] The Commission concludes that the International Division of applicant performs service, sales, or construction contracts for associate companies which do not derive, directly or indirectly, any material part of their income from sources within the United States and which are not public utility companies operating within the United States and that its exemption from the standards of § 13 (b) of the act, subject to the conditions hereinafter recited, is appropriate in the public interest and for the protection of investors. We are not convinced, however, that incorporation of the International Division separate from Ebasco, such as that contemplated by the creation of Ebasco International Corporation, is not necessary or appropriate in the public interest or for the protection of investors or consumers. But we are not disposed to refuse an order exempting the International Division pending further inquiry into this matter. Hence, our order will be subject to any subsequent finding that separate incorporation of the International Division is necessary or appropriate in the public interest or for the protection of investors or consumers.

The order exempting the International Division shall be conditioned as follows:

(1) In the event that a pension plan for employees of the International Division of Ebasco is not presented to the Commission for approval within sixty days from the date of this order,

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or if a plan is presented within this period and is subsequently disapproved, the funds accumulated in the General Reserve Account of the International Division since December 1, 1939, shall be returned to Foreign Power.

(2) The necessary capital upon which a return properly may be obtained shall be no more than \$400,000 for the International Division.

The proposal to include a 6 per cent return on the \$700,000 capital assigned to the International Division in computing operating expenses under the proposed contract between Foreign Power and Ebasco shall be modified to include no more than a 6 per cent return on capital in the amount of \$400,000.

(3) The proposal that Foreign

Power establish a \$250,000 indemnification fund for the use of the International Division of Ebasco shall not be effective. In the event this fund or any similar fund is established without prior approval of the Commission, the Commission will rescind its order exempting the International Division of Ebasco.

(4) The organization of the International Division within Ebasco shall be subject to change if it is subsequently found that separate incorporation of the International Division is necessary or appropriate in the public interest or for the protection of investors or consumers.

An appropriate order, based upon the foregoing findings of fact, conclusions of law, and conditions will be issued. [Order omitted.]

MISSOURI PUBLIC SERVICE COMMISSION

Re Missouri Utilities Company

[Case No. 9895.]

Rates, § 322 — Electricity — Demand charge — Customers creating demand.

1. Electric customers operating cotton gins and a compress and creating about one-half of the total demand on a utility system, although by reason of seasonal purchases taking only about 25 per cent of the total quantity of energy purchased by the utility, should pay one-half of the total demand charge required by the utility to be paid to the company from which it purchases electricity, p. 285.

Rates, § 143 — Cost of service — Purchased electricity.

2. An electric utility company which is faced with an increase in the cost of service by reason of a higher wholesale rate which it pays should be allowed to pass at least a part of that cost on to its customers, p. 285.

[August 10, 1940.]

SUSPENSION of proposed rates for electric service furnished to cotton gins or seasonal load; filing of higher rates permitted.

RE MISSOURI UTILITIES CO.

By the COMMISSION: On May 20, 1940, the Commission received from the Missouri Utilities Company schedules of rates for electric energy furnished to some of its industrial customers for the operation of cotton gins and cotton compresses. The proposed rates were increases over the rates heretofore charged. Upon giving notice to the customers protests were filed with the Commission asking for a hearing. The rates were then suspended by order issued in this case on May 29, 1940, and a hearing held on June 28th thereafter. All parties interested in the matter involved were given an opportunity to be heard. After filing of the tariffs as first proposed the applicant discovered it had made a typographical error in preparing the original tariff sheets, so on June 17th filed corrected sheets to take the place of those previously filed. The hearing held on June 28th was upon the sheets as filed on June 17th. Corrected copies were supplied the protestants prior to the date of the hearing.

The applicant is a Missouri corporation engaged as a public utility in the furnishing of electric service in a number of cities and towns in the southeastern part of this state. The properties in southeast Missouri are operated in two different sections. One is known as the Cape Girardeau group, the city in which the applicant's general office is located, the other the Senath group. The Senath group is comprised of properties located at Cardwell, Bucoda, Arbyrd, and Senath.

The particular rate schedules in question cover the service furnished to three cotton gins and one compress located in these towns or nearby.

They are listed as the Bertig Gin at Bucoda, the Steinberg Gin at Cardwell, the Farmers Union Gin at Senath, and the Arbyrd Compress Company at Arbyrd.

In an effort to justify the filing of the rates proposed the applicant states that it purchases the electric energy used in serving these four companies from the Arkansas Utilities Company located and operating in the state of Arkansas. The Arkansas Utilities Company is an associated corporation owned and controlled by the same holding company as the applicant. The Arkansas Utilities Company in turn purchases a large amount of its energy from the Arkansas-Missouri Power Corporation, the third corporation doing business in both Missouri and Arkansas, but in no way associated with either the applicant or the Arkansas Utilities Company. The Arkansas Utilities Company also has a small generating plant located in the town of Paragould, Arkansas, and is required under the contract with the Arkansas-Missouri Power Corporation to keep that plant in operating condition. The Arkansas Utilities Company has recently entered into a new contract with the Arkansas-Missouri Power Corporation covering the rates to be paid for the energy purchased from the latter company. The Arkansas Utilities Company has in turn notified the applicant herein that the applicant will be required to pay the Arkansas Utilities Company the same rate for the energy purchased as the Arkansas Utilities Company pays the Arkansas-Missouri Power Corporation for the energy purchased. The two purchase schedules are to be identical with the exception that the

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applicant is required to pay an additional cash sum in the amount of \$225 per year for the delivery of the energy from Paragould to the Missouri-Arkansas state line, where it is delivered to the applicant. The \$225 extra is charged to cover the cost of transmission of the energy from Paragould to the state line and the substation used in delivering the energy to the applicant.

In turn the applicant proposes to charge each of the three gin companies and the compress company the same schedule of rates for the energy delivered them as the applicant pays for the energy it purchases. This schedule reads as follows.

Demand:

First 50 kw.—\$2.00 per kw. per month.
Excess 50 kw.—\$1.75 per kw. per month.

Energy Charge:

3¢ per kw. hr. for the first 1,000 kw. hr. used per month.
2¢ per kw. hr. for the next 2,000 kw. hr. used per month.
1½¢ per kw. hr. for the next 7,000 kw. hr. used per month.
1¢ per kw. hr. for the next 40,000 kw. hr. used per month.
.9¢ per kw. hr. for the next 50,000 kw. hr. used per month.
.8¢ per kw. hr. for all additional use.

If the proposed rates had been charged for the energy delivered during the year 1939 to the protestants, the applicant would have received approximately \$4,200 per year more for that service than was received. Protestants are objecting to such increase in the cost of the energy to be furnished them.

The schedules that have been applied heretofore have varied from 6 cents per kilowatt hour down to slightly less than 2 cents per kilowatt hour, depending upon the quantity used by the individual customer and the manner in which it is used. In the sched-

ules now in effect we note that the service is contracted for for use on a continuous basis but if used in a temporary or seasonal manner 10 per cent is added to the charges to cover the seasonal use of the equipment or rather the fact that the equipment is furnished and not used. It appears from the evidence that there was provision for a fixed minimum charge or demand charge in the contract by which the applicant has been purchasing its energy, but the seller did not impose that demand charge. In turn the applicant has not required of its customers a demand charge based upon the size of the load taken. We note that the schedule contains provisions for this minimum charge of \$1 or \$1.25 per horsepower per month, but it is not definitely stated that the customers have been required to pay that minimum charge. Under the proposed schedule the applicant is asking for authority to file a schedule that will carry a monthly minimum charge of \$2 per kilowatt for the first 50 kilowatts, and \$1.75 per kilowatt per month for loads greater than 50 kilowatts. The loads of the cotton gins as well as the compress concerned in this case require more than 50 kilowatts each to serve them.

In comparing the energy rate proposed with the rate that has been heretofore charged, it will be noted that the proposed rate is considerably lower than the present rate, but by adding the demand charge the total annual cost to the protestants will be increased \$4,200. The protestants claim such increase will make it impossible for them to profitably operate their gins and compress, and will require them to

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seek other sources of power if they are to be continued.

The cotton gin loads are highly seasonal in character, operating about four months out of each year. During that four months' period the load runs up to a maximum load and then is off during the remaining part of the year. By imposing a minimum charge based upon the number of kilowatts, as is proposed, the owner will be required to pay a substantial amount of money each month during the months of the year they are not in use. The compress operates most of the time throughout the year and the effect of the demand charge taken in connection with the lower energy charge as is proposed is not so severe as on the cotton gins.

The applicant shows that it will be held accountable for a demand charge for all loads taken and for that reason it should be permitted to pass the increase to its customers, particularly when a large part of the increase is caused by the four protestants in this case. It states its normal demand on the Arkansas Utilities Company is about 450 kilowatts. When the gins are added to the load it is increased from 350 to 400 kilowatts, almost double. We note from the information appearing on Exhibit No. 9, filed in this case, that the number of kilowatt hours taken each month by the applicant varies from 90,000 to 110,000 kilowatt hours, but during the ginning season the monthly kilowatt hours taken during October ran up to almost 240,000 kilowatt hours. For the months just prior to and following the month of October the number of kilowatt hours taken are less, depending upon the season and the way the cot-

ton is brought into the gins. If the load is increased 350 kilowatts by the operation of the gins and the compress, the applicant's demand charge is evidently increased \$7,350 per year because of that increase in the load, 350 kilowatts at \$1.75 per month. If the load is increased 400 kilowatts the annual increase in the cost of the service through the demand charge alone is \$8,400, just twice the amount that the applicant claims its bill will be increased by the Arkansas Utilities Company by the application of the new schedule. From that it is evident that the application of the rates to the energy furnished the protestants will amount to something over \$4,000, leaving the remainder of the increase to the demand charge.

[1] The applicant states that the number of kilowatt hours furnished the protestants each year amount to about 25 per cent of the total quantity of energy purchased, but the amount it purchases is for operation over a period of twelve months, whereas the protestants take their energy over a period of four months. If these figures are correct, calculations will show that the average load taken by the protestants during the four months is exactly equal to the size of the load taken by the applicant to serve all other customers, which it estimates ranges in number from 900 to 1,000. If that be true, then one-half of the total demand charge required by the applicant to be paid to the Arkansas Utilities Company should be paid by the protestants.

[2] The protestants claim, however, that they should not be charged according to the same schedule that is applied to the total amount of energy

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purchased by the applicant. It is pointed out there will be diversity in the use of the energy by the protestants, so that if each of them used 1,000 kilowatt hours of energy in a given month and pay for it at the rate of 3 cents, they would each pay the same rate per kilowatt hour for 3,000 kilowatts that the applicant would pay for the first 1,000 kilowatt hours that it takes under its purchase contract. The protestants are correct in their assumption that there will be a gain by the applicant in reselling in the same blocks and at the same rate it purchases its energy. It is true that through the diversification in use of the current and reduction in energy rate the applicant will gain a reduction of approximately \$4,000, which enables it to furnish the energy to the protestants at an increased cost of \$4,200 instead of from \$7,300 to \$8,400 increase in the total cost of the energy, but calculations as to what will actually happen must be made on approximate data because no demand meters are used in furnishing the service to the protestants, so the actual demands are not known, and the evidence is not sufficient to show accurately how the proposed rates will affect the protestants. It is evident the applicant should not be required to furnish service to the protestants under the schedule proposed omitting the demand charge, because that would result in a reduction in revenues in the amount of \$3,000 or \$4,000 for the service it is furnishing them. The applicant

would be facing the increase in the cost of the energy in that same amount. The applicant should be allowed to collect at least as high a rate as it has been collecting for the service. There is no evidence presented to show that the applicant is now earning an adequate return on its investment used in serving the public, and it cannot be determined until the demand meters are installed on the individual services and the data accumulated from those readings is presented to the Commission for making a more accurate study of what rates should be charged. It appears a demand charge of \$1 per kilowatt will produce about the same total revenue the applicant has heretofore been able to secure, but since it is faced with an increase in the cost of the service, we believe it should be allowed to pass at least a part of that cost on to its customers. Since it is approaching the ginning season and the protestants do not have time to arrange for other sources of power, as they have indicated they will do in the future if the proposed rates are allowed, we believe that for the present season the applicant should be allowed to charge the protestants a demand charge of \$1.50 instead of \$2 and \$1.75

In view of all the evidence presented, after due consideration the Commission finds that the applicant should be allowed to file the rates as proposed herein with the exception that the demand charge should be as indicated above.

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Re Milwaukee Electric Railway &
Light Company

[2-U-1210.]

Re Wisconsin Electric Power Company

[2-U-1216.]

Depreciation, § 3 — Duties of Commission — Sinking-fund method.

1. The Commission, acting under subsection 7 of § 196.09, Statutes, must in the first instance determine only whether the sinking-fund method of depreciation accounting may reasonably be employed, and, if it be determined that such method may reasonably be used, the Commission must establish the rates of depreciation under a sinking-fund basis, p. 289.

Depreciation, § 32 — Annual accumulation — Sinking-fund method.

2. The sinking-fund method cannot be held to be a method which may not reasonably be employed by a public utility company, p. 289.

Depreciation, § 32 — Sinking-fund method — Operation.

3. The true conception of the sinking-fund depreciation method is that an annuity be established which, together with the compound interest earnings on the reservations, shall accumulate a sum sufficient to equal the loss on retirement of the property, p. 290.

Depreciation, § 32 — Sinking-fund reserves — Interest accumulation.

4. The actual earnings on depreciation reservations must be considered in passing on rates for utility service, and, if depreciation is recovered from the customers of the utility through the sinking-fund method, it is only just that the actual earnings on depreciation reservations be recognized in determining the amount of depreciation to be borne by the customer or the return which he must pay on a proper rate base, p. 290.

Depreciation, § 41 — Sinking-fund reserve — Interest rate — Condition of approval — Report.

5. Use of a $3\frac{1}{2}$ per cent sinking-fund interest rate was permitted in the case of a company which for a long time had used such rate, although it was indicated that earnings on the sinking fund would be in excess thereof, but it was provided that the company should compute and submit to the Commission annually, as a supplement to the depreciation reserve schedules, the facts as to the actual earnings on depreciation reservations and the difference between these actual earnings and the rate used, p. 290.

[August 17, 1940.]

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INVESTIGATION on motion of Commission of methods employed by public utility company in accruing annual depreciation expense; sinking-fund method permitted to be used at specified interest rate subject to condition as to furnishing information.

APPEARANCES: James D. Shaw, Attorney, for the company; H. T. Ferguson, Counsel, and A. R. Colbert, Chief, accounts and finance department of the Commission staff.

By the COMMISSION: On January 29, 1938, the Milwaukee Electric Railway and Light Company and Wisconsin Electric Power Company filed sworn statements with the Commission stating various reasons why the straight-line method of depreciation accounting was alleged to be not applicable to their property. These statements were filed pursuant to General Instruction 9 of the Uniform System of Accounts for Electric Utilities prescribed effective January 1, 1938. That instruction of the Uniform System of Accounts prescribes the straight-line method of depreciation accounting but provides that if the depreciation method prescribed by the system of accounts was considered to be not applicable to the property of a utility, the utility should file with the Commission, within thirty days of the effective date of the system of accounts, a sworn statement of the reasons why the methods prescribed were not applicable and a statement of the depreciation methods which in the judgment of the utility were applicable to its property.

Subsequent to the institution of these proceedings the Milwaukee Electric Railway and Light Company and Wisconsin Electric Power Company were merged on October 21, 1938,

and the possessor corporation took the name of Wisconsin Electric Power Company, by which name the respondent will be hereinafter designated, it being understood that it applies to the corporation as it now exists which owns all the electric property formerly held by the predecessor companies.

On December 31, 1938, pursuant to the provisions of § 196.09, Statutes, and to General Instruction 9—A of the Uniform System of Accounts for Electric Utilities, Wisconsin Electric Power Company submitted a plan for provision for depreciation, including separate depreciation rates for each plant account covering depreciable property. This depreciation study was included as a part of these proceedings and action regarding the certification of these rates is necessary pursuant to the provisions of § 196.09, Statutes.

At the hearings held in March, 1938, the evidence was directed to the merits of the straight-line and sinking-fund methods. Witnesses for the company testified regarding the sinking-fund method and claimed that it was better adapted to the property of the company. The chief of our accounts and finance department testified in favor of the straight-line method. No evidence was presented as to the rates of depreciation for the various classes of property or of the specific interest rate to be used in connection with the sinking-fund method. These matters were left to be disposed

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of in connection with the filing of depreciation rates for certification pursuant to § 196.09, Statutes, which filing, under the provisions of the uniform system of accounts, was to be made not later than December 31, 1938.

[1] We need not appraise for the purposes of this proceeding the relative merits of the straight-line or sinking-fund methods of accounting. Subsection 7 of § 196.09, Statutes, provides as follows:

"If a public utility desires to account for depreciation on a sinking-fund basis and the Commission determines that such basis of accounting for depreciation may reasonably be employed, the Commission shall establish, in the manner hereinbefore referred to, the composite rate to be applied to the aggregate fixed capital used for public utility purposes to determine the amount which shall be charged to operating expenses, and the interest rate applicable to the reserve balance at which additional credits to the reserve shall be computed. In such cases the total amount to be credited to the reserve shall be the amount charged to operating expenses, plus the amount obtained by applying the interest rate to the reserve balance. Public utilities which account for depreciation on a sinking-fund basis shall be subject to the same restrictions and regulations in their accounting for the entire amounts to be credited to the depreciation reserve as are applicable to those public utilities which make the entire provision for depreciation by other methods permitted herein."

It will thus be seen that in the first instance we must determine only

whether the sinking-fund method of depreciation accounting may reasonably be employed and if it be determined that such method may reasonably be used we must establish the rates of depreciation under a sinking-fund basis.

[2] Most of the utilities in the state prefer to use the straight-line method and all certifications of depreciation rates heretofore made under § 196.09, Statutes, have been on that basis. However, there is sufficient evidence that the sinking-fund method may reasonably be employed where the interest rate used is fixed at a proper level or the actual earnings on depreciation reservations are computed and made available for proper purposes in regulatory matters. This Commission has used the method in a number of instances, particularly in earlier cases. The California and the Oregon Commissions use it consistently. It has been used in cases before the Supreme Court, among these being *Los Angeles Gas & E. Corp. v. California R. Commission*, 289 US 287, 77 L ed 1180, PUR1933C 229, 53 S Ct 637; *Clark's Ferry Bridge Co. v. Pennsylvania Pub. Service Commission* (1934) 291 US 227, 78 L ed 767, 2 PUR(NS) 225, 54 S Ct 427, and *California R. Commission v. Pacific Gas & E. Co.* (1938) 302 US 388, 82 L ed 319, 21 PUR(NS) 480, 58 S Ct 334. The method is recognized in many accounting textbooks as a means of accounting for depreciation.

In view, therefore, of the use which has been made of the sinking-fund method in cases involving the depreciation of public utility property and the recognition of it by accountants as a basis of depreciation accounting, the

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sinking-fund method cannot be held to be a method which may not reasonably be employed and we are of the opinion that the company is privileged to use it in accordance with § 196.09 (7), Statutes. We shall proceed, therefore, to a consideration of the depreciation estimated filed by the company on December 31, 1938.

[3] The depreciation rates filed were computed in accordance with a $3\frac{1}{2}$ per cent sinking-fund formula. Section 196.09 (7) provides that the Commission shall establish the interest rate to be used with the sinking-fund method. Accordingly, subsequent to the filing of the depreciation estimates our staff made studies concerning the rate of interest to be used and numerous conferences were held with company representatives regarding this matter.

[4, 5] It appears that the depreciation reserve is invested primarily in utility plant. This is reflected by the following condensed balance sheet of the company as of December 31, 1939, prepared from the annual report to the Commission:

Assets:	
Utility plant	\$107,754,219
Other physical property	2,998,084
Investments (chiefly in transportation subsidiary)	44,760,397
Current assets (including \$2,527,699 temporary cash investments)	9,255,823
Deferred debits, etc.	6,029,575
Total	\$170,798,098
Liabilities:	
Common stock	\$21,000,000
Preferred stock	32,660,600
Premium on capital stock ...	94,159
Bonds	55,000,000
Promissory notes	13,250,000
Current liabilities	3,324,811
Deferred credits	1,109
Depreciation reserve	32,284,424
Other reserves	8,941,577

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Contributions in aid of construction	280,762
Surplus	3,960,656
Total	\$170,798,098

In 1939 the electric operating income of the company, with depreciation calculated on a $3\frac{1}{2}$ per cent sinking-fund basis and with the annuity only included in operating expenses, was equal to about 7 per cent on electric plant. In previous years the percentage has been higher and on the average has exceeded 7 per cent over long periods. This is not to say that this percentage was the rate of earnings on depreciation reservations. However, since the depreciation reserve is invested primarily in utility plant, it is certain that earnings on depreciation reservations are substantially in excess of the $3\frac{1}{2}$ per cent interest rate proposed to be used and would approximate the rate of earnings on plant.

In support of its contention that a $3\frac{1}{2}$ per cent sinking-fund interest rate is proper, the company points to the long-continued use of this rate. The method was commenced following the Commission order decided October 30, 1919, 24 Wis RCR 1-39, PUR1920A 361, in which a $3\frac{1}{2}$ per cent sinking-fund method was used by the Commission. This case involved railway property and power property assigned to railway business. However, the company was permitted to set up depreciation on its electric and heating property on a $3\frac{1}{2}$ per cent sinking-fund basis. The principles of this sinking-fund method have been followed in the company's accounting for nearly two decades.

The company claims also that the

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use of a higher sinking-fund interest rate would involve a much lower charge to operating expenses and might create unfavorable reaction on the part of investors when comparing current depreciation reservations with those heretofore made. It claims also that the depreciation reserve accumulated under a higher sinking-fund interest rate would always be lower as a percentage of plant than a reserve progressing in accordance with a $3\frac{1}{2}$ per cent sinking-fund formula and that the larger reserve accumulated under a $3\frac{1}{2}$ per cent interest rate would afford greater protection to the capital invested in the business.

A further contention of the company is that it is impractical to immediately invest depreciation funds in property additions and replacements. Although it is granted that the funds generally find their way into utility plant, it is alleged that there is a lag between the date of collecting depreciation reservations through revenues and their investment in plant. In addition it is stated that there are times when depreciation reservations accumulate to some extent in liquid assets on which there are but little earnings.

In further support of a low sinking-fund interest rate, the company claims that the rate must be fixed with regard to the future rather than the past and for an extended period of time. In recognition of the fluctuations of rates of return the company states that it is conservative financial practice to fix the sinking-fund interest rate sufficiently low so that there is every possible assurance that the rate specified in the formula may be earned on the depreciation reservations. The company admits, however, that the actual

earnings on depreciation reservations are significant and should be considered by the Commission in judging the reasonableness of rates for utility service.

We concur in this latter view. The true conception of the sinking-fund method is that an annuity be established which, together with the compound interest earnings on the reservations, shall accumulate a sum sufficient to equal the loss on retirement of the property. In accordance with this principle, in theory at least, the actual rate of interest earnings should be given effect in the sinking-fund formula. Practically, this is difficult and may be undesirable in the long run. The actual earnings on depreciation reservations cannot be forecast precisely and it is difficult to adapt a fluctuating rate of interest to the sinking-fund formula. Further, if the interest rate be fixed too high the depreciation reserve may accumulate at too slow a rate. Also a high interest rate used in a sinking-fund formula postpones the heaviest depreciation charges, annuity, and interest, to the last year's life of the property, concerning which depreciation estimates are most unreliable and when net income obtained from the property may be at its lowest point.

Unquestionably, however, the actual earnings on depreciation reservations must be considered in passing on rates for utility service. If depreciation is recovered from the customers of the utility through the sinking-fund method it is only just that the actual earnings on depreciation reservations be recognized in determining the amount of depreciation to be borne by the customer or the return which he must pay

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on a proper rate base. Unless these earnings are considered and the customer's interest protected by giving the earnings their due weight in fixing rates for utility service, the utility gains by the difference between the actual earnings on depreciation reservations and the $3\frac{1}{2}$ per cent sinking-fund interest rate.

There are various ways in which the customer's interest can be preserved. One method is to set the sinking-fund interest rate high enough to at least reasonably approximate the actual return on depreciation reservations. A second method is to include both the annuity and the interest in depreciation expense and to deduct the depreciation reserve in computing a book rate base. A third method is to credit operating income used for return purposes with the earnings on depreciation reservations in excess of the $3\frac{1}{2}$ per cent interest rate and to calculate the returns on an undepreciated rate base.

We do not feel it necessary to decide at this time what is the proper consideration to be given to the sinking-fund method in a proceeding involving the utility's service rates. We are convinced, however, that actual earnings on depreciation reservations should be given substantial weight and that it is necessary that the full facts concerning the depreciation reserve and the earnings on depreciation funds be readily available to the Commission. Accordingly our certification of depreciation rates issued herein will provide that the company shall compute and submit to the Commission annually, as a supplement to the depreciation reserve schedules contained in the financial report to this Commission, the facts as to the actual earnings on depreciation

reservations and the difference between these actual earnings and the $3\frac{1}{2}$ per cent sinking-fund interest rate. Subject to this condition we believe that a certification of depreciation rates on a $3\frac{1}{2}$ per cent sinking-fund basis may be made as all pertinent facts concerning the depreciation method and the earnings on depreciation reservations will be in the Commission's files for all proper purposes in any proceeding involving the company's rates, rules, or practices.

The service life and net salvage estimates submitted by the company have been reviewed by our staff although no detailed check of the estimates has been made. Based on this general review the staff is of the opinion that the estimates submitted are within the zone of reasonableness. Accordingly we believe the statutory findings may be made and the depreciation rates certified. Changes in the rates may be made from time to time as further experience warrants and we recommend continued study of retirement experience of the company to the end that depreciation expense charges may reflect current estimates based on the latest available information.

Findings

The Commission finds:

1. That the sinking-fund basis of accounting for depreciation may reasonably be employed and a $3\frac{1}{2}$ per cent sinking-fund interest rate may be used.
2. That in order that the Commission shall have complete information concerning the earnings on depreciation reservations for all proper purposes in a proceeding involving the rates, rules, or practices of the utility, the actual earnings on depreciation

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reservations and the excess of such actual earnings over the theoretical earnings calculated by the use of the interest rate assumed in the sinking-fund formula should be reported to the Commission for each year, commencing with the year 1940, in the annual report of the utility to the Commission.

3. That the estimates of depreciation rates computed on a $3\frac{1}{2}$ per cent sinking-fund basis, as set forth in the schedule hereto annexed and made a part hereof, are reasonable and proper for use in accounting for depreciation in accordance with the provisions of § 196.09, Statutes.

FEDERAL COMMUNICATIONS COMMISSION

Re Navarro Broadcasting Association

[Docket No. 5839, B-118.]

Radio, § 6 — Revocation of license — Public interest — Delinquency of licensee.

The Commission, in determining whether to revoke the license of a radio broadcast station for false representations to the Commission and other violations of the Communications Act, must be guided by its primary duty to the listening public, and discipline should not be inexorably applied when station licensees demonstrate to the Commission that they are ready to act in good faith.

(PAYNE, Commissioner, dissents.)

[September 5, 1940.]

HEARING on revocation of license to operate radio broadcast station; order revoking license revoked.

APPEARANCES: Beauford Jester and Julius C. Jacobs, Corsicana, Texas, on behalf of respondents; George B. Porter and Hugh B. Hutchison on behalf of the Commission.

By the COMMISSION: This proceeding arose upon an order issued by the Commission on February 7, 1940, revoking the license of the respondents, J. C. West and Frederick Slau-son, a partnership doing business as the Navarro Broadcasting Association, to operate broadcast station

KAND. The respondents duly requested a hearing which was held on April 23, 24, 25, and 26 before Commissioner George Henry Payne in Dallas, Texas, on the following issues:

(1) That the original construction permit and station license were issued by the Commission upon false and fraudulent statements and representations and because of the failure of the applicants to make disclosures to the Commission concerning the financing of station construction; and the operation, ownership, manage-

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ment and control thereof by James G. Ulmer and Roy G. Terry, either or both, in violation of the provisions of the Communications Act of 1934, as amended, and the Rules and Regulations of the Commission; and

(2) That the rights granted to the Navarro Broadcasting Association (J. C. West, president) in and by the terms of the station license have been by it transferred, assigned, or otherwise disposed of, without the consent in writing of this Commission, in violation of the provisions of the license and of the provisions of § 310(b) of the Communications Act of 1934, 47 USCA § 310(b), as amended.

The Commission finds that these respondents misrepresented to the Commission their intentions as to the financing, construction, control, and operation of the station in securing their original construction permit and station license. In addition the Commission finds that they transferred the rights granted them to James G. Ulmer and Roy G. Terry without the consent of this Commission, in violation of § 310(b) of the Communications Act.

These facts taken alone would support an affirmation of the Commission's Order of Revocation. There are other facts appearing in this record, however, which gives the Commission pause and which lead to a different conclusion.

These violations were committed by the respondents either prior to the commencement of the operation of this station or within less than six months thereafter. Though ignorance of the law is no excuse, yet their conduct must be viewed in its true light as

that of men at the outset of their career in radiobroadcasting without any previous experience with the Commission.

On November 6, 1937, Ulmer and Terry in consideration of the payment of \$6,000 by the respondents "released, relinquished, and quitclaimed" to the respondents all their interest in this station. Thus, within six months of the time Station KAND began to operate the respondents had obtained full control of the station and ended all affiliation of James G. Ulmer and Roy G. Terry therewith. Since that time, in so far as may be ascertained from the record of these proceedings, Station KAND has been operated by the respondents in the interest of the public in that area. Accordingly, this station, which began its program tests on May 17, 1937, and was issued its station license and began operation on June 1, 1937, has been operated since November 6, 1937, in full compliance with the representations made by respondents to this Commission. There is nothing in this record to indicate that the respondents, if permitted by this Commission, will not continue to operate in the public interest as they have done since November 1937.

In determining whether to revoke the license of a radio broadcast station for false representations to the Commission and other violations of the Communications Act, the Commission is faced with competing considerations. The Commission's primary duty is to the listening public and, in dealing with a licensee, the Commission must be guided by this primary duty. On the other hand, if the Commission is to carry out its function of granting and denying ap-

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plications for licenses, it must obtain true and accurate information from those who seek to operate radio stations and must take disciplinary action against those who make false representations to the Commission. But discipline should not be inexorably applied when station licensees demonstrate to the Commission, as these respondents have now done, that they are ready to act in good faith.

To revoke their license at this time would deprive the community of the service of this station when there is no reason to believe that the respondents will not continue to operate it in the public interest. From their conduct since 1937 and from their good reputation in their community, the Commission feels that the respondents may be trusted with the public responsibilities contained in an authorization to continue to operate Station KAND.

In view of these facts, the Commission feels that public interest will be served by revoking its previous order of revocation, reserving all rights, however, to incorporate the facts developed in these proceedings in any future proceeding involving this station.

Accordingly, it is *ordered* this 5th day of September, 1940, that the Commission's order of February 7, 1940, revoking the license of Station KAND, be, and hereby is, revoked.

PAYNE, Commissioner, dissenting:

I disagree with the action taken by the Commission in dismissing the revocation order in the Navarro Broadcasting Association case issued on February 7, 1940. In my opinion the charges made by the Commission in this order are fully established by the record of the hearing at which I presided. Nothing has happened since the hearing to change my mind.

This case is not so dissimilar from the Eagle Broadcasting Company, Inc., Case, Station KGFI, Brownsville, Texas, in which the Commission affirmed the revocation order, as to justify contrary action.

If J. C. West and Frederick Slauson were animated by good faith they would have filed voluntarily the contract of September 14, 1937, between themselves and Ulmer, covering the operation of Station KAND. This they failed to do. With the dismissal of the revocation order these people who, in my opinion, have been guilty of many infringements of the act and regulations, go scot free.

The decision of the Commission in the Westinghouse case this week, from which I also dissented and which has been followed in the present case, is in my opinion a very bad precedent and may give the Commission a great deal of perturbation in the future.

UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT, E. D. LOUISIANA,
NEW ORLEANS DIVISION

John J. Fogarty
v.
Southern Bell Telephone & Telegraph
Company, Incorporated

[No. 331.]

(34 F Supp 251.)

Service, § 134 — Discontinuance — Illegal use of telephones — Race-track information.

1. A telephone company is justified in discontinuing service to one whom it believes to be using its facilities to gather and disseminate racing news in violation of state laws, p. 302.

Statutes, § 5 — Presumption as to validity — Telephone service denial — Racing news.

2. A telephone company may rely upon every legal presumption in favor of the validity of a statute making it unlawful to distribute racing news outside the enclosure of a licensed track, in determining whether or not it, as a public utility, can discontinue service to one gathering and disseminating such information by phone in violation of the statute, p. 303.

Service, § 134 — Discontinuance — Illegal use of telephones — Racing news — Statutory prohibitions.

3. A telephone company, in determining that it is justified in discontinuing service to one who is using its facilities to gather and disseminate racing news outside the enclosure of a licensed track, could consider the fact that if a statute making such distribution unlawful is unconstitutional, then a former act which the act in question was intended to amend and reenact still subsisted, p. 303.

Service, § 134 — Discontinuance — Illegal use of telephones — Official warning.

4. A telephone company, in determining that it is justified in discontinuing service to one using its facilities to gather and disseminate racing news, could consider a warning, received from the United States Attorney General's office, that it would be made to face criminal proceedings if such phone service were not discontinued, p. 303.

[August 14, 1940.]

PETITION for injunction restraining telephone company from discontinuing service to subscriber believed to be engaged in business of disseminating race-track news; denied.

APPEARANCES: T. Semmes Walmsley, of New Orleans, La., for plaintiff;
J. C. Henriques and Henriques &

Mayo, all of New Orleans, La., for defendant.

FOGARTY v. SOUTHERN BELL TELEPH. & TELEG. CO., INC.

CAILLOUET, D. J.: John J. Fogarty filed his petition in the civil district court for the parish of Orleans, praying:

1. For a temporary restraining order against the Southern Bell Telephone and Telegraph Company, Inc., its officers, agents, servants, and employees, from in any manner interfering with, or preventing, him from receiving the telephone service that he had been theretofore receiving through utilities furnished by the said company, etc.;

2. For a preliminary injunction enjoining, restraining, and prohibiting the said company and persons from in any manner interfering with, or preventing, him from receiving and securing said service, etc.;

3. For judgment recognizing petitioner's right to receive the said telephone service, and for a permanent injunction perpetuating the preliminary injunction in question, etc.

The petition specifically alleges that he "is engaged in the business of publishing and selling a newspaper which disseminates sports news to subscribers therefor, and in connection therewith he renders a daily service to his subscribers by giving free and up-to-date last-minute news to all of his subscribers."

He further alleges that the telephone service furnished by the defendant company is used, for both local and long-distance "calls, for gathering and disseminating news and information for petitioner, and is an indispensable part of his business, and is necessary to the publication of his newspaper."

His petition then continues to the effect that the Southern Bell Tele-

phone and Telegraph Company, Inc., is a public utility, which is required by law to furnish service in the New Orleans commercial area to subscribers who are "conducting lawful enterprises, such as conducted by petitioner," where the subscribers have paid for such service, as he, himself, has.

He then alleges that the defendant company has notified him that all of the telephone service, so duly paid for by him, will be discontinued by a certain date, and that such threatened discontinuance, if put into effect, (a) "will disrupt, interfere with, and completely stop the business which your petitioner is engaged in and prevent his publishing the news, as he has no other means of acquiring and promptly disseminating the information gathered through the present means of telephone"; (b) will constitute a breach of his contract for service with said defendant company; (c) will deprive petitioner of his means of livelihood, and will, therefore, deprive him of his property without due process of law.

The petition then furthermore alleges that the "interference with plaintiff's business is an interference with and abridges the rights of the freedom of the press in securing and publishing its news."

In addition to all of the foregoing, the petitioner then alleges that, as an inducement to subscribe for his publication, held out by him to many persons "in New Orleans and the vicinity," he gives them "free of cost, a news service whereby he keeps them informed upon their calling him on any sport news that occur during the day," and that discontinuance of his said paid-for telephone service "will

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interfere with the carrying out of his contract and will impair his obligation with your petitioner's subscribers."

Threatened irreparable injury and lack of adequate remedy at law to protect himself against such injury is finally alleged.

A restraining order, coupled with the usual rule to show cause why a preliminary injunction should not issue, was granted by the state court upon the faith of said petition and the plaintiff's thereto subjoined affidavit, specifically setting forth as follows: "Your proponent further declares that he does publish a newspaper and furnish to his subscribers a news service in the city of New Orleans; that he gathers his news by means of the telephone herein subscribed for in connection with the news published in said publication; that in order to keep his subscribers supplied with up-to-date last minute sports information, he corrects any news contained in said publication with any last minute changes that may occur during the course of the day; and that said news service is therefore a current news service in which said telephones are an indispensable part; that he is under contract to deliver the information secured and disseminated by him through his publication; that if he is not permitted to receive said information by telephone same will interfere with his contractual obligations and that if said telephones are discontinued his publication will be forced to stop and that same will disrupt his entire work and he will have no means of securing said data, or disseminating the up-to-date, last-minute news, thereby interfering with the freedom of the press; that your affiant has no remedy at law, and

that his loss will be irreparable unless an immediate temporary restraining order issue."

The petition for removal from the state court to this court next followed, before the arrival of the return day set in the rule nisi, and, in due course (the removal being effected on the ground of diversity of citizenship), the case was tried directly on the merits before *this* court (by agreement of the parties) upon the answer filed by the defendant company, which specifically denied that petitioner Fogarty is engaged "in the business of publishing and selling a newspaper which disseminates sports news to subscribers therefor, etc."

The answer then charged that, in truth or in fact, Fogarty publishes,—not a "newspaper" but a mere race scratch sheet—and is engaged in distributing and disseminating, by means thereof, as well as by and through defendant's telephone service, to various and sundry places "outside the enclosure of a licensed race track," information pertaining to race tracks, race horses, betting odds, forms, charts, etc.; all, in violation of the law of the state of Louisiana.

Additionally, by way of further answer, the defendant company alleged as follows:

"Defendant asserts that it is a part of what is commonly known as the Bell System, which system is comprised of the American Telephone and Telegraph Company and its associated companies; the constituent companies thereof, by means of and on their respective facilities and connections therefor and with the connecting companies furnish intrastate as well as in-

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terstate wire communications service throughout the United States.

"Defendant further shows that prior to the notice of its intention to discontinue the service of petitioner, it and wire companies in general were advised and warned by the Attorney General of the United States and other Federal officers, by statements issued to the press and by and through correspondence between the Illinois Bell Telephone Company and the American Telephone and Telegraph Company, on one hand, and the said Federal officers on the other hand, all of which statements and correspondence defendant had knowledge of, that by rendering service to persons engaged in the business in which petitioner is engaged, defendant would violate the laws of the United States and would cause itself to be subjected to criminal indictment and prosecution in the courts of the United States. Defendant avers that it does not hold itself out to serve, and cannot be compelled to serve, every person, firm, or corporation, if by giving such service it would or might subject itself or its employees to indictment or prosecution for the violation of the laws of the United States.

"Defendant, therefore, asserts that it was and is reasonably apprehensive that to continue to furnish the service to petitioner which is described in the petition would or might subject defendant or its employees to criminal indictment and prosecution for violation of the laws of the United States, and that by reason thereof defendant was and is lawfully authorized to discontinue said service to petitioner."

On the trial, plaintiff Fogarty testified that his business is that of "pub-

lishing sports papers," and of furnishing information to some 10 "news agencies" in the South.

The "papers" that he publishes are:

1. The "early or afternoon entry editions," which (as P-1) is before the court, and sells for 15 cents, is a 3-sheet ($8\frac{1}{2} \times 14$) mimeographed document setting out the overnight race-track entries, the weather and track conditions, the jockeys, their respective weights, and the results of races on the preceding day, with scratches, payoffs, etc.; the average daily "circulation" of this scratch sheet is about 3,000.

As "space-fillers" on one such "morning edition" before the court (P-1), appear scattered baseball results; this "news" occupies but a bare 1 per cent (more or less) of the mimeographed space;

2—the "morning edition," which is before the court as "P-2," sells for 35 cents, and has a daily circulation of between 4,000 to 4,500; this exhibit, also, is a 3-sheet ($8\frac{1}{2} \times 14$) mimeographed document, and it sets out the condition of the weather and of the operating tracks, the respective races covered, the entries, jockies, weights, odds, scratches,—no other "news"; and

3—the printed "Crescent City News" (which is before the court as "P-3"), with a circulation of 1,000 to 1,500; that, plaintiff Fogarty calls his "daily newspaper." It is a 4-sheet ($11\frac{1}{4} \times 15$) paper, over three-fifths of whose news is such as pertains to horse racing, of a similar nature as the news carried in the two scratch sheets "P-1" and "P-2."

To gather the "racing news" material, so appearing in his said publica-

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tions (which his petition refers to as his *one* newspaper) and to furnish, as plaintiff represents, "a daily service to his subscribers by giving free and up-to-date last minute news to all of his subscribers," plaintiff Fogarty maintains 94 telephones at 803-804 Carondelet building, in the city of New Orleans, and 29 telephones at the Wells-Fargo Building. Four of the 94 are special long distance phones, over which no local service is had from the telephone company. Two of the 94 (both locals) are in plaintiff's private office, the remaining 92 (all upright, —not French type phones) are pyramided 3, 2, and 1, and are answered by 13 employees.

The 29 phones in the Wells-Fargo buildings are used only in emergencies.

All of these phones (or practically so) were in use before November 15, 1939, which was the day upon which plaintiff Fogarty ceased to be the manager of Nationwide News Service; it went out of business on or about that date, and he succeeded it.

The greater number of these phones had all been subscribed for by him, under fictitious names, such as Merlin Shrimp Company, Houma Linen Company, Pelton Termite Company, Baxter Flour Company, Poydras Iron Works, J. T. Tile Company, Morgan Soap Company, Acme Housecleaning Company, etc. Twenty-one of the 94 in the Carondelet building and 15 of the 29 in the Wells-Fargo building, stood in the names of Frank Mulkern, or A. Lupo, respectively, both of whom had been also employed by the Nationwide News Service and both of whom continued in plaintiff's employ when the said Nationwide News Service

discontinued business and was succeeded by plaintiff.

The phones were so subscribed for because (so plaintiff Fogarty testified) the telephone company refused to service the Nationwide News Service and suggested the taking out of the service contracts in that way; the company required affidavits to the effect that the desired service would not be used for illegal purposes, said the witness; apparently (the witness sought to leave the impression) the telephone company was not disposed to *openly* service the Nationwide News Service because of its known illegality.

The difference between *that* business and his own (by which it was succeeded), so contended plaintiff Fogarty on the stand, lay in this, to wit: the Nationwide News Service had no publications like his; it "got out no advertisement," whilst (he said) he does; it called up its subscribers to furnish them "racing service," and (he said) he does not—the subscribers call him up.

Fogarty's "subscribers" to his two scratch sheets and his one "newspaper" pay no subscription price, but each week the "subscribers" purchase and pay for as many scratch sheets or "newspapers" as they elect. No records of such weekly purchases are kept, but the plaintiff agreed to furnish and file in the record (in connection with his testimony on cross-examination) a list of his "subscribers," with amounts paid, for the week next immediately preceding that of the trial. This he did do, and such list shows him to have had, for that week, sixty-one "subscribers," who paid him sums ranging from the minimum of \$10 to the maximum one of \$400, respective-

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ly, for an aggregate weekly income of \$4,500.

These "subscribers," so plaintiff's testimony indicates, were all former "subscribers" of the defunct Nationwide News Service, of which he had been the manager. When he "took over" on November 15, 1939, he began the publishing of his "sheets" and sent them to said former "subscribers" regularly. He did not solicit their "business"—they, on the contrary, came to him.

Plaintiff's testimony is that the larger portion of his business is "horse racing," and that were it not for that, he would not have need of the extraordinary service equipment of 94 active telephones and the reserve emergency force of 29 additional, the service and toll charges as to which cost him during April, 1940, approximately \$5,000; and for which the defendant telephone company yearly collects from him an aggregate sum exceeding \$25,000.

By means of his four special long-distance phones, the plaintiff gathers his racing news from the country's race tracks and then disseminates the same from and through his telephone equipment in New Orleans to his "subscribers," practically all of whom are to be found in the city or within its immediate vicinity; for instance, no more than seven of his sixty-one "subscribers" for the week ending May 6, 1940, being located beyond the borders of the state of Louisiana.

Dissemination of this "phone-gathered" racing news also takes place by means of plaintiff's two scratch sheets and his one "newspaper," but these "publications" are plainly but the subterfuge "difference" in the operation

of the race news dissemination system conducted by Fogarty, owner, and the former one of Nationwide News Service, of which he had charge as manager.

The plaintiff insists that the phone service which the defendant company threatens to discontinue is an absolute necessity for the continued conduct of his business, "the biggest portion" of which, he testifies, is "horse racing."

He gives racing news over the phone to restaurants, saloons,—to anyone; it makes no difference to him who calls for such information over the phone, whether it be a handbook operator or not. He "guesses" that such "handbooks" do so seek such information from him, but (so he says), he doesn't "know positively" that they do.

Of his "subscribers," the one of them who was called to the stand by the defendant company admitted that he "booked racehorses" and was a "subscriber" to plaintiff Fogarty's "scratch sheets," for which he paid between \$90 and \$125 per week; he secured, he said, the needed information for the carrying on of his "book business" from these scratch sheets, as well as orally, by telephone service from the Fogarty establishment. He has a particular phone call number assignment, the evidence in this connection being that nearly all (if not all) of the 121 telephones rented by plaintiff Fogarty are not listed in the telephone directory. When he, the witness, Jules Rimbolt, calls the Fogarty establishment, he secures, for instance, the race results on a particular track and is informed as to the "pay-off,"

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which thereupon governs his own payoff of the racing bets in his "book."

The defendant company offered satisfactory and sufficient evidence in support of its contention that it has reasonable grounds to suspect the illegality of the plaintiff's "improved" system of disseminating race-track news, but plaintiff insists that the operation of his system does not violate any law.

He contends that Act No. 13 of the 1934 2nd Extraordinary Session of the Louisiana legislature (which amended and re-enacted Act No. 26 of the 1934 1st Extraordinary Session) and which *first* makes it ". . . unlawful for any person or persons, firm, or corporation whatsoever to distribute, disseminate, make known, advise, or spread, or otherwise, by means of telephone, telegraph, radio, or in any other manner make known to pool rooms, bar rooms, saloons, restaurants, gambling houses, or any other place outside the enclosure of a licensed race track, any information of whatever kind, pertaining to any race, race track, race horse, betting or betting odds, form charts, or any information relative or incidental thereto," and then provides as follows, to wit: ". . . the provisions of this act shall not apply to any newspaper published daily and consecutively for one year prior to the adoption of this act. Any newspaper published daily and consecutively for one year prior to the adoption of this act may receive by telephone, or telegraph, or otherwise, and may distribute, disseminate, make known, or spread, through its columns, any and all information pertaining to any race track, race, race horse, betting odds, form charts, or

any information relative thereto," either does not apply to him or is unconstitutional.

It is unconstitutional, the plea filed by him on the trial urges, because:

"(a) It is in violation of the Fourteenth Amendment of the Constitution of the United States because it denies your petitioner the equal protection of the laws guaranteed to him.

"(b) That said act is an unwarranted and unlawful interference with interstate commerce.

"(c) That said act violates the First Amendment of the Constitution of the United States and Art. 1, § 3 of the Constitution of the state of Louisiana by curtailing or restraining the liberty of speech and of the press.

"(d) That said act is discriminatory and deprives your petitioner of rights granted to others.

"(e) That said act is not general in its scope and grants special privileges denied to your petitioner."

The plaintiff makes out no case for the interposition of the equity power of this court, the court's findings of fact and conclusions of law being:

Findings of Fact

[1] 1. The defendant, Southern Bell Telephone and Telegraph Company, Inc., is a public utility.

2. The defendant believed that the telephone equipment by it furnished to the plaintiff J. J. Fogarty, was actually being used by him for illegal purposes, and against the public policy of both the United States of America and the state of Louisiana.

3. It justified the threatened discontinuance of the plaintiff's telephone service by reason of said belief.

Conclusions of Law

[2-4] 1. Even in the face of plaintiff's charged unconstitutionality of Act No. 13 of the 1934 2nd Extraordinary Session of the Louisiana legislature, the defendant company could rely upon every possible legal presumption in favor of the statute's validity (*Union P. R. Co. v. United States* [1879] 99 US 700, 718, 25 L ed 496, 498) in determining whether or not it, as a public utility, could justify its discontinuance of plaintiff's telephone service under the state of facts confronting it.

2. The defendant company, in so determining, could also consider the fact that were such act unconstitutional (as contended for by plaintiff), then the former Act No. 26 of the 1934 1st Extraordinary Session of the Louisiana legislature which said legislature intended to amend and reenact by the attempted enactment of the amendatory Act No. 13 aforementioned, still subsisted and its terms provided that it was "... unlawful for any person or persons, firm, or corporation whatsoever to distribute, disseminate, make known, advise, or spread, or otherwise, by means of telephone, telegraph, radio, or in any other manner make known to pool rooms, bar rooms, saloons, restaurants, gambling houses, or any other place outside the enclosure of a licensed race track, any information of whatever kind, pertaining to any race, race track, race horse, betting or betting odds, form charts, or any information relative or incidental thereto."

3. The defendant company in so determining, could also consider the provisions of Act No. 127 of the 1920 Session of the Louisiana legislature, the constitutionality of which was upheld by the supreme court of Louisiana in the case of *State v. Mustachia* (1922) 152 La 821, 94 So 408.

4. The defendant company, in so determining, could also consider the warning that it received from the United States Attorney General's office, relative to the probability of defendant's being made to face criminal proceedings if the Fogarty phone service were not discontinued.

5. Defendant was legally justified (under the facts which were known to it at the time that it notified plaintiff of the contemplated discontinuance of his telephone service) in believing that its continued furnishing of such service was, at least, contrary to the public policy of both the United States of America and the state of Louisiana, if not illegal.

6. Reasonable grounds still exist to justify the determination of the defendant company to no longer service the plaintiff's race-track news dissemination system, and the company should not be enjoined against putting its threat of discontinuance into effect.

7. Under the testimony and the evidence, the plaintiff is entitled to none of the relief which he seeks from this court, sitting as in equity, and his prayer must, therefore, be denied.

Judgment may, accordingly, be entered for the defendant company, as prayed for in its answer.

SECURITIES AND EXCHANGE COMMISSION

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Re Walter H. Pollak, Trustee of Associated Gas & Electric Company

[File No. 70-131, Release No. 2274.]

Security issues, § 15.1 — Powers of Federal Commission — Terms and conditions — Trustee's certificates.

1. The Securities and Exchange Commission has power to impose terms and conditions in any order permitting a declaration to become effective under § 7 of the Holding Company Act, 15 USCA § 79 g, and trustee's certificates issued in the course of a reorganization under the Bankruptcy Act bear no special immunity in this regard, p. 306.

Security issues, § 120 — Terms and conditions — Trustee's certificates.

2. Imposition, by the Securities and Exchange Commission, of conditions upon approving a declaration as to the issuance of trustee's certificates in a reorganization proceeding was deemed unnecessary except as to the condition that such securities should be issued only if and to the extent authorized by the bankruptcy court, where the views of the court as to the proper functions of the trustee appeared to coincide with those of the Commission, and where the Commission as a party in interest in the reorganization and as a regulatory body would have further supervision in the matter, p. 307.

[September 4, 1940.]

DECLARATION under § 7 of the Holding Company Act covering the issuance and sale of trustee's certificates; declaration approved.

APPEARANCES: Walter H. Pollak, Samuel J. Silverman, and Joseph F. Monaghan, for Walter H. Pollak, Trustee of Associated Gas and Electric Company; Lewis M. Dabney, Jr., for the Public Utilities Division of the Commission; Jack Lewis Kraus, II, and David C. Colladay, for the General Protective Committee for Security Holders of Associated Gas and Electric Company.

By the COMMISSION: Walter H. Pollak, trustee of Associated Gas and

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Electric Company, has filed a declaration pursuant to § 7 of the Public Utility Holding Company Act of 1935, 15 USCA § 79g, covering the issuance and sale of \$200,000 principal amount of trustee's certificates.

On January 10, 1940, Associated Gas and Electric Company (hereinafter called AGECO) and its direct subsidiary, Associated Gas and Electric Corporation (hereinafter called AGECORP), filed voluntary petitions for reorganization under Chap. X of the Bankruptcy Act. AGECO hold-

ings in AGECORP consist almost wholly of common stock and junior debt obligations. AGECO's position in the AGECORP reorganization will depend to a considerable extent on whether it can sustain a claim it asserts against AGECORP arising out of the so-called recap plan.¹ AGECORP holds stock in various subholding companies which in turn hold the stock of almost all the operating companies in the system either directly or through other subholding companies.

On March 2, 1940, the declarant was appointed trustee for AGECO by the Honorable Vincent L. Leibell, United States district judge for the southern district of New York. Separate trustees were appointed for AGECORP.

The proposed certificates are to be sold in order to obtain funds for the administration of the estate. They will be issued only after authorization of the court under § 116(2) of the Bankruptcy Act, 11 USCA § 516.² Application was made to the court for leave to issue these certificates and a hearing was held on August 12, 1940. At the hearing no objection was made to the issuance of the certificates except that counsel for the Commission referred to the necessity for an order of the Commission under § 7 of the Public Utility Holding

Company Act, *supra*. No evidence was taken and the matter is pending before the court.

The certificates to be issued are assignable, will bear interest at a rate not to exceed 4 per cent per annum, and will mature within two years from the date of issuance with the right in the trustee to redeem at any time prior to maturity. They will rank on a parity with costs of administration and no additional trustee's certificates, not subordinated to the present issue, may be issued unless all certificates of the present issue are redeemed.

The trustee proposes to enter into a standby agreement with Lazard Freres & Co., investment bankers, under which the bankers will agree, for one year, to purchase at par any and all of the proposed certificates in multiples of \$5,000. The trustees contemplates the issuance of \$50,000 of the certificates upon authorization and the balance as funds are needed.

After appropriate notice, a hearing on the declaration was duly held. Briefs were submitted and we heard argument.

We find that the standards of § 7 (e) and (g) are inapplicable to the proposed securities, and that, if the issue is authorized by the reorganization court, the securities will comply with the standard of § 7(c).³ The re-

¹ See Note 5, *infra*.

² That section reads: "Upon the approval of a petition, the judge may, in addition to the jurisdiction, powers, and duties hereinabove and elsewhere in this chapter conferred and imposed upon him and the court . . .

(2) authorize a receiver, trustee, or debtor in possession, upon such notice as the judge may prescribe and upon cause shown, to issue certificates of indebtedness for cash, property, or other consideration approved by the judge, upon such terms and conditions and with such security and priority in payment over existing obligations, secured or unse-

cured, as in the particular case may be equitable; . . ."

³ Section 7(c) provides in part: "The Commission shall not permit a declaration regarding the issue or sale of a security to become effective unless it finds that (1) such security is . . . (D) a receiver's or trustee's certificate duly authorized by the appropriate court or courts. . . ."

Our order will provide that it shall be effective only if, and to the extent that, the proposed securities are authorized by the reorganization court under § 116 (2) of the Bankruptcy Act.

SECURITIES AND EXCHANGE COMMISSION

maining question is whether any adverse findings are required under § 7 (d).

Counsel for the Public Utilities Division does not oppose the issuance of the certificates. He contends, however, that adverse findings must be made under § 7(d) (2), (3), and (6) ⁴ unless our order permitting the declaration to become effective is accompanied by conditions designed to secure the following:

(1) that the proceeds of the sale of these certificates be used by the trustee principally in the prompt investigation and prosecution of the so-called recap plan litigation; ⁵

(2) that, in order to meet the standards of § 7(d) (2) and (6), and in the light of doubts as to the earning power of AGECO at a time when it is unknown whether AGECO will prevail in the recap plan litigation, all cash funds received by the estate, other than proceeds from the sale of trustee's certificates and including cash now on hand, when adjudicated to be available for expenses of admin-

istration, be immediately applied to pay off the trustee's certificates theretofore issued, and that such certificates be canceled and not reissued.

The trustee contends (1) that the imposition of the type of conditions urged is not within the statutory power of the Commission and would constitute a usurpation of the jurisdiction of the reorganization court, and (2) that, in any event, the proposed issue will comply with the standards of § 7 (d) without the imposition of any such conditions.⁶

[1] 1. Section 7(d) (1) provides that if the requirements of subsections (c) and (g) are satisfied, the Commission shall permit a declaration under § 7 to become effective unless it finds that the standards enumerated in § 7 (d) (1) to (6), inclusive, have not been met. We have found that subsection (g) is inapplicable here and that the requirement of subsection (c) is satisfied since the proposed security will be a "trustee's certificate duly authorized by the appropriate court." Under § 7(f) "any order" permitting

⁴ Section 7(d) reads in part: "If the requirements of subsections (c) and (g) are satisfied, the Commission shall permit a declaration regarding the issue or sale of a security to become effective unless the Commission finds that . . . (2) the security is not reasonably adapted to the earning power of the declarant; (3) financing by the issue and sale of the particular security is not necessary or appropriate to the economical and efficient operation of a business in which the applicant lawfully is engaged or has an interest; . . . (6) the terms and conditions of the issue or sale of the security are detrimental to the public interest or the interest of investors or consumers."

⁵ AGECO and its security holders assert various causes of action against AGECORP growing out of the so-called recap plan and antecedent transactions, which, if successfully pursued, would improve the position of AGECO and its security holders in the AGECORP reorganization. An outline of the recap plan is given in *Associated Gas & E. Corp.* (1940) 6 SEC —, *Holding Company* 35 PUR(NS)

Act Release No. 1873. A description of the history of AGECO and a more detailed analysis of the recap plan and the financial transactions leading up to it are set forth in Part VII of the Commission's Report on Protective and Reorganization Committees. The term "recap plan litigation" is used here in the broad sense to cover all causes of action growing out of the recap plan and the transactions leading up to it.

⁶ At the oral argument the trustee raised additional points directed to the constitutionality of the Public Utility Holding Company Act as applied in the particular case. It is, of course, well settled that an administrative body such as this Commission has no authority to refuse to apply the provisions of a statute which it is called upon to administer by reason of the asserted unconstitutionality of such provisions. See *Panitz v. District of Columbia* (App DC 1940) 112 F(2d) 39; *Re Houston Nat. Gas Corp.* (1938) 3 SEC 664, 671, 25 PUR(NS) 1; *Re Walston & Co.* (1939) 5 SEC 112, 113.

a declaration to become effective "may contain such terms and conditions as the Commission finds necessary to assure compliance with the conditions specified in this section." Thus, it is clear that to assure compliance with the standards of § 7(d), we have the power to impose terms and conditions in "any order" permitting a declaration under § 7 to become effective.

Trustee's certificates bear no special immunity in this regard. The powers and duties conferred upon the Commission by the Congress with respect to the regulation of the issuance of securities of registered holding companies are in no way diminished by the fact that the particular securities are trustee's certificates issued in the course of a reorganization under the Bankruptcy Act. A mere reference to various provisions of the Public Utility Holding Company Act makes it seem to us clear beyond any question that the Congress contemplated that the administration of registered holding companies in bankruptcy should conform with the requirements of the act. Thus, § 11(f) of the act, 15 USCA § 79k (f) expressly provides that any plan of reorganization for a registered holding company in the Federal courts should be submitted to the Commission for approval, and also expressly confers powers upon the Commission with respect to fees, expenses, and remuneration paid in connection with any such reorganization. Further references to the administration of estates of registered holding companies are found in § 2(a) (2), (16), 15 USCA § 79b; § 7(c) (1) (D); and § 7(c) (2) (A). See also *Re Utilities Power & Light Corp.* (1939) 5 SEC 483, 512, 513; cf. *Con-*

tinental Illinois Natl. Bank & Trust Co. v. Chicago, R. I. & P. R. Co. (1935) 294 US 648, 685, 79 L ed 1110, 55 S Ct 595. It is also of particular significance that the Congress made no change in the Public Utility Holding Company Act when it revised the Bankruptcy Act in 1938.

The further question remains as to whether in the particular case the imposition of terms or conditions is necessary to assure compliance with the standards of § 7(d).

[2] 2. Although we have decided, for reasons hereinafter stated, that no conditions should be attached to our order except a condition that our order shall not be effective until, and except to the extent that, the court authorizes the proposed issue, the circumstances here seem to make certain observations important. That the AGEKO trustee's principal duty in the administration of the AGEKO estate is to direct the institution and prosecution of the recap plan litigation is not disputed. Among the possibilities of realizing assets for the AGEKO security holders this litigation is undoubtedly of chief importance. Moreover, until this litigation is consummated, it may well be impossible to prepare an intelligent plan of reorganization for either AGEKO or AGECORP.

Counsel for the Public Utilities Division suggests that to date the trustee has accomplished little in the way of preparing for, or even considering, this all-important litigation, and urges that unless there is some assurance that the proceeds of the proposed certificates will be used to prosecute this litigation, and to administer the estate in an economical and efficient manner,

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the standards of §§ 7(d) (3) and 7 (d) (6) will not be met.

The record shows that the trustee has been seriously hampered in the performance of his duties due to a lack of funds. But this lack of funds makes it all the more desirable that the proceeds of the proposed issue be conserved for the accomplishment of his essential functions.

Although he was questioned at some length on the matter, the testimony of the trustee gives us no assurance that the proceeds of the proposed issue will be used for immediate and intensive investigation and prosecution of the recap plan litigation. Rather, the record seems to indicate that he proposes to divert a considerable portion of these funds to matters which, in our view, constitute mere duplication of work to be performed by the AGECORP trusteeship and are not essential to the proper administration of the AGECON estate. Thus, he intends to use a part of the funds for research and investigation of problems connected with the financing, operation, and management of the operating subsidiaries and the simplification and integration of system companies.⁷ These problems of the operating companies are presently being dealt with by the AGECORP trusteeship which is directly concerned with these matters and is well equipped to handle

them. It must be remembered that the AGECORP trusteeship is under the control of the same court which is directing the AGECON trusteeship. It is entirely appropriate that pursuant to the direction of the court, there be some division of functions between the two trusteeships and that duties with regard to the operating companies which the trustee of AGECON might have if AGECORP were not in bankruptcy, can be more properly handled through the AGECORP trusteeship. As noted below, the court has already sharply defined such a division of functions.

The trustee also proposes to use a portion of the funds to conduct independent investigations under § 167 of the Bankruptcy Act, 11 USCA § 567 to ascertain possible causes of action. Here, again, duplication results, for the court has appointed a special attorney to conduct these investigations and resulting litigation for both trusteeships.

It would seem, particularly in view of the limited funds available and the huge job to be done, that economical and efficient operation of the estate requires the concentration of the proceeds of the proposed issue in the performance of the trustee's essential duties of prosecuting the recap plan litigation and participation in the AGECORP reorganization.⁸ An ob-

⁷ The record contains a 10-page "Outline of Work to be Done" prepared by the trustee. Pages 4 to 6 of this outline list the "Problems of subsidiaries" in the consideration of which the trustee proposes to devote a portion of the funds realized from the sale of the proposed certificates.

Some of the topic headings under the subdivision are:

Legal work of system; Economies in operation; Interlocking directorates; Refinancing; Sale of properties; Mergers and elimination of unnecessary holding companies; 35 PUR(NS)

Metropolitan Edison accounting reorganization; Proceedings before various regulatory bodies—SEC proceedings; other Federal and state regulatory cases; Auditing of reports; Policy of trustees as to directing flow of dividends from subsidiaries.

⁸ At one point in his testimony, the trustee does recognize that the scope of his duties is largely defined by these two problems:

Q. I assume, Mr. Pollak, in your opinion the comparative importance of this recap plan litigation with the other duties is not in proportion to the amount of lines it covers in the

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vious corollary of this view is that any diversion of these limited funds away from the trustee's essential duties would impair the efficient administration of the estate.

We think that the problems of the operating companies are properly the concern of the AGECORP trustee-

memorandum? [Referring to a memorandum prepared by the trustee as an outline of work to be done.]

A. No; I should have thought that the recap function was one of the two great, specific functions of my trusteeship.

Q. And what would you consider the other great, specific function?

A. The other would be the reorganization itself, that was connected with the recap plan.

Q. This division of functions and the reasons therefore have been sharply defined by the court administering both estates. On August 12, 1940, the trustees of AGECORP presented an order authorizing the trustees to acquiesce in a capital contribution of Central U. S. Utilities Company, one of the subholding companies in the AGECO system, of \$1,500,000 to its subsidiary Pennsylvania Electric Company. After the transaction had been explained, Mr. Kraus, attorney for a committee representing holders of AGECO debentures, suggested that the AGECO trustee join in the certificate. The following discussion took place:

The Court: I think under the circumstances I can sign the order in its present form. After all, the reason for it has been stated by Mr. Throop. *These subsidiaries are the immediate subsidiaries of the corporation, Associated Gas and Electric Corporation, and as you know I have had the trustees keep an eye on all of the activities of the subsidiaries.* That is essential to a proper administration of the estate of the corporation. So I suppose the trustees of the Associated Gas and Electric Corporation felt that under the circumstances in view of the magnitude, as Mr. Throop has said, of this transaction they should get some specific authorization from the court.

Mr. Kraus: I think that is highly proper, and I think Mr. Pollak should also give a specific authorization, because obviously I don't think a transaction of this kind should be done without his knowledge and consent any more than that of the trustees of the corporation.

Mr. Throop: Mr. Pollak had notice.

The Court: Don't you see, Mr. Kraus, if we are going to have both groups pass upon all these transactions I will have to build up a staff for Mr. Pollak which will be as large as the staff for the corporation. Now, the corporation has financial men; it has expert

ship and not of the AGECO trustee-ship. This division of functions is required not only by reason of the more intimate corporate relationship of AGECORP to the operating companies, but also because AGECORP has the funds and the staff to carry on this work and AGECO has not.⁹

economists and engineers, and everybody else to advise them on these things, and they have the direct contact with the subsidiary. Not Mr. Pollak; the trustees of the corporation have.

Mr. Kraus: I will reserve for a future day a comment on that situation because at some appropriate time the committee and the security holders of the Associated Gas and Electric Company are going to present the emphatic views that they have on that subject . . . but I do think, your Honor, in paragraph 1 of the order where your Honor authorizes Willard L. Thorp and Denis J. Driscoll of AGECORP that it should be Willard L. Thorp and Denis J. Driscoll of AGECORP and Walter H. Pollak of AGE-
CO.

The Court: In view of the division of responsibility that we have already set up in relation to these two trusteeships, and without thereby attempting to indicate in advance the superior equities of one or the other in any of the subsidiaries, I think I should sign the order in its present form, or else we have got to be prepared to set up a very large organization of the trustee of the company, and he has not enough money to pay his present expenses. . . .

Mr. Kraus: I should be the last to criticize Mr. Pollak and his staff. I do think it lamentable, and shall have something to say later about the fact, that were they all, as undoubtedly they are, true geniuses they are still undermanned and ill-equipped to meet the burning problems and difficult questions that they have to solve. All your Honor has to do is to compare the list of the staffs of AGECO and AGECORP. Everybody on that staff of AGECORP, in my opinion, is absolutely essential in doing a good job. But how can AGECO present the issues that have to be met without an accountant on their staff without a number of other people that are clearly necessary?

The Court: As soon as they get the money—they have already taken up with me the matter of getting some accountants who will work for them and be on their staff of course that is necessary, and they will get to that. But let us remember what the division of work was at the start and keep in mind that you would like to keep the expenses down too. Now, all these men that are expert economists and financial men and rate men, and every-

SECURITIES AND EXCHANGE COMMISSION

Counsel for the Public Utilities Division has contended that the order permitting the application to become effective should also be conditioned to provide for repayment of the trustee's certificates as soon as funds are available for that purpose. He suggests that in view of the contingent nature of the principal assets of AGECO, such a condition should be attached to our order to provide additional protection for the holders of the certificates. It may be noted here, however, that although there is nothing in the agreement with the bankers to prevent the distribution of the certificates and the certificates themselves expressly provide that they may be assigned, the case has been presented to us on the representation that the issue will be purchased and retained as a private sale.

Counsel suggests as a further basis for the condition urged that consideration of the interests of investors requires that any preferred position as to future financing in the system arising by reason of this issue should be dispelled at the earliest possible time. Under the proposed agreement with the bankers, it will be stipulated that the purchase of the trustee's certificates will not qualify the bankers for either more or less favorable treatment in future financing; it does appear, however, that these bankers have already submitted to the trustee a comprehensive plan for refinancing in the whole system.

We agree that the interests of investors throughout the system require some assurance against any possible

basis for a claim of preferential treatment and that in view of this fact and in view of the contingent nature of the AGECO assets, it would be highly desirable that the certificates be redeemed as soon as funds are available for that purpose.

(3) In the light of the foregoing, we would be inclined to make adverse findings under § 7 (d) (2), (3), and (6), 15 USCA § 79g if we did not have some assurance that the two principal objectives suggested by counsel for the Public Utilities Division would be attained. These objectives could be achieved by conditions attached to our order. But even without the imposition of conditions, in this particular case, we think that there will be adequate assurance that the proceeds of the issue will be used in the economical and efficient operation of the estate and that the certificates will be redeemed as soon as funds are available for the purpose. The proposed certificates cannot be sold until the reorganization court has authorized their issuance "upon such terms and conditions and with such security and priority in payment over existing obligations, secured or unsecured, as in the particular case may be equitable." The remarks of the court to which we have alluded (see note 9, *supra*) appear to indicate that our views as to the proper functions of the AGECO trustee coincide with those of the court. Moreover, we are a party in interest in the reorganization and we will have the opportunity to reiterate our views to the court at any time it appears that the proceeds of this fi-

thing else, who have been hired for the staff of the corporation, are men who when they render an opinion as to the advisability of a transaction such as this do so on the merits

35 PUR(NS)

without regard as to whether or not the corporation is the immediate holding company above them or the company is . . . (Minutes 573-7.) (Italics supplied.)

RE POLLAK

financing are not being used in the best interests of the estate or whenever it appears that funds are available which should be used to redeem the certificates. Finally, our powers under § 11 (f), 15 USCA § 79k will enable us to exercise some further degree of supervision over these funds and our order herein will, of course, be without prejudice to any future action under § 11 (f) or any other appropriate provision of the act bearing upon the use of the funds. With respect to the possibility of preferential treatment of the bankers in future financing, we can rely upon our powers under §§ 7 and 11 (f) to insure arm's length bargaining in any such financing. Consequently, we believe that we need not impose the conditions suggested; the procedure outlined above will permit desirable flexibility in the administration of the estate without abandoning the objectives contemplated by the standards of § 7 (d).

The trustee saw fit at the argument before us to characterize as "persecution" the efforts of counsel for the Public Utilities Division to aid us in the discharge of our duties under the act. We think it entirely appropriate to state that, after careful examination of the record in this case, we can find no possible justification for this assertion. In our opinion, counsel for the Public Utilities Division would have been entirely remiss in his obligations if he had not inquired into and called our attention to the manner in which the administration of the estate has thus far been carried on and to the uses to which the trustee proposes to put the proceeds of the certificates.

In view of all the facts and circumstances of the particular case and for the reasons stated, we believe that we need not make any adverse findings under § 7 (d) or impose any conditions in our order other than a condition that it will be effective only if, and to the extent that, the issue is authorized by the court under § 116 (2) of the Bankruptcy Act, 11 USCA § 516.

An appropriate order will issue.

ORDER

Walter H. Pollak, trustee of Associated Gas and Electric Company, debtor in reorganization under Chap. X of the Bankruptcy Act, having filed a declaration and amendment thereto pursuant to § 7 of the Public Utility Holding Company Act of 1935, regarding the issue and sale of \$200,000 aggregate principal amount of trustee's certificates of indebtedness; and

A public hearing having been held on such declaration, after appropriate notice; briefs having been submitted and argument having been heard; the record in this matter having been considered and the Commission having this day issued its findings and opinion herein;

It is *ordered*, subject to the proviso that this order shall be of no effect until and except to the extent that the issue and sale of the said certificates are authorized by order of the United States district court for the southern district of New York pursuant to § 116(2) of the Bankruptcy Act, that such declaration be and hereby is permitted to become effective.

MAINE PUBLIC UTILITIES COMMISSION

MAINE PUBLIC UTILITIES COMMISSION

Re Mars Hill & Blaine Water Company

[U-1615.]

Service, § 473 — Water utility — Chlorination plant — Location.

1. The Commission will not authorize a water company to install a chlorination plant at such a point that it will deprive certain customers of water service for all time, although installations at a point so as to render service available to the properties of such customers will inconvenience the company because of bad roads, p. 313.

Service, § 222 — Discontinuance — Charter rights — Estoppel.

2. A water company which has rendered service to certain properties for several years is estopped to claim that by reason of lack of charter provisions it has no duty to continue such service, p. 314.

[September 9, 1940.]

PETITION to approve location of chlorination plant and abandonment of certain services; denied.

APPEARANCES: Edward F. Merrill, Skowhegan, for Mars Hill & Blaine Water Company; Stetson H. Hussey, Mars Hill, for Ernest J. Smith, Mars Hill, Preston D. Redstone, Westfield, York and Fenderson, Mars Hill, and B. F. Pierce, Mars Hill.

By the COMMISSION: Mars Hill & Blaine Water Company is a public utility furnishing water and water service in the towns of Westfield, Mars Hill, and Blaine, from a reservoir known as Young's lake in the town of Westfield.

The company filed petition with this Commission, setting forth that it had been notified by the Maine State Department of Health that the condition of the water being furnished by it was unsatisfactory and that, in order to protect the health and safety of its

customers, that it has become necessary to install a chlorinator for the purpose of treating the water being distributed by it.

At the present time there is a temporary plant installed for that purpose, and the petition set forth that the company felt that the proper location of a permanent chlorination plant, which would require daily supervision and attention, should be at a point on the company's mains which would eliminate the possibility of the said company being able to furnish properly treated water to the farm of Preston D. Redstone, the farm of Ernest J. Smith, the farm of York and Fenderson, and the farm of B. F. Pierce.

The petitioner asked this Commission to approve the location and installation of a water-driven chlorination plant at the point suggested by the company, and further, that the com-

RE MARS HILL & BLAINE WATER CO.

pany be authorized to abandon services to the several parties mentioned.

Hearing on the petition was ordered to be held at Mars Hill, on August 20, 1940, and, at the time and place of hearing, notice was proved to have been given as ordered and the appearances entered as noted above.

[1] The Commission is satisfied, from the testimony introduced by the company, that the installation of a permanent chlorination plant is highly desirable, in order that safe water may be furnished by the company to its customers. The point of installation of this plant, as suggested by the company, would result, as the petition set forth, in a failure to supply the four farms in question with treated water. The reason for the company's locating the permanent plant at the point it suggested was that the condition of the road leading from Mars Hill to the furthest farm served by the company—that of Mr. Smith—was impassable at times; that there seemed to be no feasible point at which to place this permanent plant without the result being that untreated water would go to the four farms in question and that good management and proper supervision required the installation at the point suggested by the company.

The road from Mars Hill to the Smith property has been improved to approximately the residence of Mr. Redstone, who, of the four farmers mentioned, occupies the one nearest to Mars Hill.

At the present time there is a little more than one-half mile of the road between Redstone's and Smith's that has not been improved, but Mr. Smith, who is one of the selectmen of the

town of Westfield, testified that it was the intention of the town of Westfield to continue the improvement on this highway at least to Mr. Smith's property and that some 300 to 500 feet of this road was being improved each year, the money of the town being somewhat limited and the distance of the improvement depending upon the cost involved, but Mr. Smith was positive that within a reasonable length of time the road would be completed. There was some conflict in testimony as to the condition of the unimproved road at the present time. It apparently, from the testimony of the parties living upon the road, had been used the year around, is traveled by the mail carrier, and, while there may be very short periods of time when the traveling is not good, yet people, in general, have been able to get through and there has been no appreciable length of time when the road was what could be strictly called impassable.

Mr. Smith further stated that he was willing to give to the water company a right to erect the permanent chlorination plant on his property, together with a right of way to the plant, and that there was a suitable place for the installation of the chlorination plant, which would provide proper drainage for a water-driven chlorination plant.

The company engineer testified that, if the highway problem was removed from the picture, there was no objection on the part of the company to installing this chlorinator at some point along Mr. Smith's property, if they could get a right of way to install it and the place provided suitable drainage.

MAINE PUBLIC UTILITIES COMMISSION

The farms involved in the proposed abandonment are apparently of a somewhat substantial nature, one of them being testified to as representing an investment of some \$15,000. This involved testimony that a water supply was very necessary for the proper carrying on of the farm, providing for livestock, and water for cultivation purposes, these farms in general being given over to the planting of potatoes.

The Commission is satisfied that while it may be true that some inconvenience would be attendant upon traveling over this unimproved highway at certain times of the year, that within a reasonable length of time the highway will be improved to Mr. Smith's property, and that to authorize abandonment of service to the farm in question would be unfair and unwise and would work an undue hardship upon the parties involved, when the company itself will only suffer a slight inconvenience for a relatively short period of time, or until the road is permanently improved. Were the chlorination plant to be installed at an expense of some \$1,800 at the point suggested by the company, and the road subsequently improved, the four properties in question would, without doubt, be without water service for all time.

The Commission therefore feels that we should not authorize the abandonment of these services and the installation of the chlorination plant at the point suggested by the company but that they should attempt to work out with Mr. Smith a location of the plant on his property at some suitable

place, especially in view of Mr. Smith's offer to give the company the land involved and a right of way to the chosen site.

[2] The company raised a further question, claiming that under its charter it had no right to furnish water to people in Westfield; that their rights by charter in Westfield were simply for the purpose of laying mains. Service has been rendered to these properties in question for many years, and the law is well established by the dedication of their property to the public that it does not lie in the mouth of the company to now claim that by reason of lack of charter provisions it has no obligation to continue service to the parties involved in this matter.

The legal principles involved have been set forth in *Munn v. Illinois* (1877) 94 US 113, 133, 24 L ed 77, where the court said:

"They entered upon their business and provided themselves with the means to carry it on, subject to this condition. If they did not wish to submit themselves to such interference, they should not have clothed the public with an interest in their concerns."

See also *State ex rel. Helm v. Trego County Coöp. Teleph. Co.* 112 Kan 701, PUR1923C, 539, 212 Pac 902; also *Chicago, B. & Q. R. Co. v. Reed*, 114 Kan 190, PUR1923E, 680, 217 Pac 322.

It is, therefore,

Ordered, adjudged, and decreed that the prayers of the petitioner be denied.

RE SWAN CREEK ELECTRIC CO.

UTAH PUBLIC SERVICE COMMISSION

Re Swan Creek Electric Company

[Investigation Docket No. 29.]

Accounting, § 6 — Duty to keep proper accounts — Electric company.

1. An electric company must install a bookkeeping system in conformity with the classification of accounts prescribed by the Commission for electric utilities, p. 315.

Accounting, § 7 — Required items — Exemption.

2. An electric company's records should contain only entries pertaining to its operations, and entries relating to the personal business of its management should be excluded, p. 316.

Depreciation, § 51 — Electric utility.

3. An electric company was required to adopt and follow a consistent policy in regard to the treatment of depreciation and to charge as an operating expense 3.2 per cent of the original cost of construction of its depreciable properties as an annual charge for depreciation expense until the experience of the company should warrant changing that rate, p. 316.

Accounting, § 10 — Depreciation reserve — Straight-line method.

4. An electric company, in setting up the original cost of construction of its properties on its books, should set up in its depreciation reserve an amount determined for straight-line depreciation accounting, p. 316.

[August 24, 1940.]

I NVESTIGATION of rates and practices of an electric company; order in accordance with opinion.

By the COMMISSION: On March 27, 1940, the Public Service Commission of Utah advised the Swan Creek Electric Company by letter that an informal investigation of the rates, properties, practices, and operations of the company would be undertaken by the Commission. This investigation has been made, and written reports have been submitted to the Commission by its engineering and accounting departments, containing information obtained as a result of analyzing the company's operations and setting forth recommendations rela-

tive thereto. Copies of these reports were submitted to the company on July 2, 1940, and informal discussions have been had with the Commission and the company officials relative to them on July 10, 1940, and on subsequent dates. From the information contained in these reports and as a result of the discussions had by the Commission with the company officials, the Commission finds:

[1] That a complete new bookkeeping system should be installed by the company and kept in conformity with the classification of accounts prescribed

UTAH PUBLIC SERVICE COMMISSION

by the Commission for Class "E" electric utilities.

[2] That the records of the company should contain only entries pertaining to its operations, and entries relating to the personal business of its management should be excluded.

[3] That the company should adopt and follow a consistent policy in regard to the treatment of depreciation and charge as an operating expense 3.2 per cent of the original cost of construction of its depreciable properties as an annual charge for depreciation expense until the experience of the company warrants changing that rate.

That the company should comply with general orders issued by the Commission relating to its operations.

That the company should set up on its books the original cost of construction of its properties as of January 1, 1940, in conformity with the following tabulation, the detail of which is contained in the engineering department report dated June 15, 1940—Swan Creek Electric Company: [Table omitted.]

[4] That in setting up the original cost of construction of its properties on its books, the company should set up \$29,000 in its depreciation reserve, which amount is determined for straight-line depreciation accounting.

That the company's present irrigation pumping rate should be increased from \$4 per month per horsepower of demand to \$5 per month per horsepower demand.

That the company's present commercial lighting rate that provides for a minimum charge of \$5 per month,

which includes 60 kilowatt hours, the next 40 kilowatt hours at 5 cents per kilowatt hour, and all excess kilowatt hours at 3 cents per kilowatt hour, should be canceled by a schedule which would provide for a minimum monthly charge of \$2, which would include 17 kilowatt hours, the next 10 kilowatt hours at 10 cents per kilowatt hour, the next 33 kilowatt hours at 6 cents per kilowatt hour, the next 40 kilowatt hours at 5 cents per kilowatt hour, and all excess kilowatt hours at 3 cents per kilowatt hour.

That the company's two residential lighting schedules, one of which provides for a minimum charge of \$1.50 per month, including 12 kilowatt hours, and all excess kilowatt hours at 10 cents per kilowatt hour, and the other that provides for a minimum monthly charge of \$2, which includes 20 kilowatt hours, the next 10 kilowatt hours at 10 cents per kilowatt hour, the next 20 kilowatt hours at 5 cents per kilowatt hour, and all excess kilowatt hours at 3 cents per kilowatt hour should be canceled, with a schedule which provides for a minimum monthly charge of \$1.20, which includes 12 kilowatt hours, the next 18 kilowatt hours at 10 cents per kilowatt hour, the next 20 kilowatt hours at 5 cents per kilowatt hour, and all excess kilowatt hours at 3 cents per kilowatt hour.

That the company make available a rate for church, school, state, and government institutions, which would provide for a minimum monthly charge of \$2, including 20 kilowatt hours, and all excess kilowatt hours at 3 cents per kilowatt hour.

That the company should give care-

RE SWAN CREEK ELECTRIC CO.

ful consideration to various of the recommendations contained in the Commission's engineering department report, with the view of improving the type of service rendered by the company to its customers.

NEW JERSEY BOARD OF PUBLIC UTILITY COMMISSIONERS

Re Deepwater Operating Company et al.

Contracts, § 4 — Commission approval — Statutory requirements — Electricity.

No statutory provision requires the Board's preliminary approval of a contract providing for the supply of steam and electricity by an electric utility to a private corporation and to another electric company.

[August 27, 1940.]

APPPLICATION for approval of supplemental agreement for the operation of a generating station; dismissed.

APPEARANCE: Joseph F. Autenrieth, for the petitioner.

By the COMMISSION: This is an application upon petition for the approval of a supplemental agreement entered into between Deepwater Operating Company and others, as above recited, which petition and supplemental agreement by reference thereto is made a part hereof. Said agreement is a supplement to an agreement dated January 13, 1928, entered into between the same parties, or their predecessors. The general purpose of the proposed supplemental agreement is to provide an additional supply of steam and electric energy for the requirements of E. I. du Pont de Nemours & Company for the operation of its plant adjacent to the generating station proposed to be erected as provided by the terms and conditions of the supplemental

agreement herewith submitted and to make available a supply of surplus energy to Atlantic City Electric Company and Deepwater Light & Power Company.

The agreement of January 13, 1928, is substantially similar in terms, conditions, and purposes to that of the supplemental agreement submitted in this application for approval. Said agreement was submitted to this Board for approval and this Board, by its decision dated February 2, 1928, 13 Am Rep NJPUC 409, PUR1928C 79, dismissed the application for the approval of said original agreement upon the ground that there was no statutory provision requiring preliminary approval of such contracts to be valid.

The Board has jurisdiction over the general subject matter of the proposed supplemental agreement, such as the

NEW JERSEY BOARD OF PUBLIC UTILITY COMMISSIONERS

facilities to be constructed, the adequacy of service, and the rates and charges therefor, together with other matters of jurisdiction that may be applicable to the supplemental agreement, as provided by law. There is no provision in the statute that requires the Board's preliminary approval of the proposed contract, or any of the terms thereof. The subject matter may, at some future time, be the subject of consideration, either on the Board's initiative or on complaint, within the Board's jurisdiction as defined by the Public Utility Act. The Board cannot, therefore, at this time commit itself to approval or disapproval of the

said contract or its various terms and provisions, but will reserve jurisdiction with respect thereto as to all matters over which this Board may have jurisdiction in relation to said contract or the operations thereunder until such time as occasion for the exercise of jurisdiction by this Board in the future may arise under the statute.

The Board finds and determines that the present application for approval shall be dismissed but that the company be and it is hereby *ordered* and *directed* to file said supplemental contract with the Board, the same to be subject to the Board's jurisdiction as herein stated.

MICHIGAN PUBLIC SERVICE COMMISSION

Re Michigan Bell Telephone Company

[T-252-40.24.]

Rates, \$ 566 — Telephones — Private branch exchange equipment.

Authority was granted to a telephone company to amend its tariff to provide that when cord nonmultiple switchboard equipment is used in conjunction with mechanical switching equipment, the applicable rate will be that generally used with the mechanical system.

[July 2, 1940.]

PETITION *for authority to revise telephone tariff schedule;*
granted.

By the COMMISSION: Petition in the foregoing matter was filed June 23, 1940.

The Michigan Bell Telephone Company provides two general types of attended automatic private branch ex-
35 PUR(NS)

change systems known as the "Class E Type I" and "Class E Type II" systems.

The Class E Type I dial system consists of one or more positions of switchboard equipped with cord cir-

RE MICHIGAN BELL TELEPH. CO.

circuits (used for distribution of inward messages by cord connection, and for handling outward toll calls and assistance calls) and dial switching equipment for intercommunicating and outward calls, together with subscriber's instrumentalities and service lines.

The Class E Type II system differs from Type I system principally in that instead of a switchboard of one or more positions, a single-position cabinet is furnished to be used for distribution of inward messages by key operation and dialing and for handling outward toll and assistance calls. The Type II system is employed where the attendant is required to handle only a relatively small amount of traffic, where the system serves only a relatively small number of stations, where relatively few central office trunks are required and where only one attendant is required.

Power equipment associated with the Type I system contemplates the use of greater capacity equipment than the power equipment associated with the Type II system. The monthly charge for power equipment for Type I systems is \$35 and for power equipment for Type II systems is \$20.

The petitioner has experienced a demand for a system with the flexibility of the Type I system but with the small

capacity of the Type II system. To meet this situation a single position of Type I switchboard has been associated with the dial switching equipment ordinarily used with the Type II system.

According to the petitioner, the power equipment requirement for the foregoing arrangement can generally be met by the small capacity ordinarily used with the Type II system. Therefore, the petitioner desires to revise its tariff to provide that when Class E Type I, cord nonmultiple manual switchboards are used in conjunction with Class E Type II, mechanical switching equipment, the rate for the associated power plant will be the rate applicable for power plant equipment used with Class E Type II systems, namely, \$20 per month. The proposed action would effect a reduction in charges to sixteen existing customers amounting to \$180 per year each, or a total annual reduction of \$2,880.

The Commission has carefully considered the matter now before it and being fully advised in the premises is of the opinion that the proposed action is just and reasonable, would not increase any rate or charge to any customer, and would be in the public interest.

MICHIGAN PUBLIC SERVICE COMMISSION

MICHIGAN PUBLIC SERVICE COMMISSION

Re Home Telephone Company
of Grass Lake

(T-150-40.1.)

Service, § 445 — Telephones — Foreign exchange.

Foreign exchange telephone service will be authorized where numerous requests for such service have been made, but it will be furnished to applicants only if they continue as subscribers of some class of service at the same location where the foreign exchange service is proposed to be installed.

[July 1, 1940.]

PETITION for authority to put into effect rates and regulations for furnishing foreign exchange telephone service; granted.


By the COMMISSION: Home Telephone Company of Grass Lake petitioned June 26, 1940, for authority to put into effect rates and regulations for the furnishing of foreign exchange telephone service within its Grass Lake exchange.

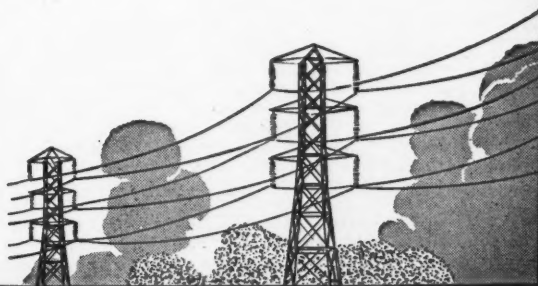
Foreign exchange telephone service is service to a customer from an exchange other than from the exchange which normally would serve at his location. Numerous requests have been received from time to time urging that Jackson exchange service be furnished to locations outside the Jackson exchange service area and within the Grass Lake exchange area. Not having rates and regulations for this service, Home Telephone Company of Grass Lake has been unable to offer said service to applicants.

It is the proposal of Home Telephone Company of Grass Lake to adopt, as though they were its own, the rules, regulations, and rates of Michigan Associated Telephone Com-

pany for the furnishing of Foreign Exchange telephone service to subscribers located within its exchange boundaries, which rules, regulations, and rates were specifically approved by the Commission's order of October 26, 1939, in File T-552-39.9, except that foreign exchange service will be furnished to applicants only on condition that they be and continue as a subscriber of some class of service of the Grass Lake exchange at the same location where the foreign exchange service is proposed to be installed and in all cases the foreign exchange customer will be required to pay construction costs to reach the point of connection with the foreign exchange line.

The proposal of Home Telephone Company of Grass Lake has been examined and the Commission being fully advised in the premises is of the opinion that the offering of foreign exchange telephone service by said company would be in the public interest and should be approved.


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Industrial Progress

Selected information about manufacturers, new products, and new methods. Also news on utility expansion programs, personnel changes, recent and coming events.



Safe-Cabinets and Files Endure Fire Tests

CONVINCING tests of the ruggedness and fire-proof construction of Remington Rand Safe-Cabinets were witnessed recently by a number of utility and other executives interested in record protection. The demonstrations were conducted at the company's \$250,000 testing laboratory at the company's plant in Marietta, Ohio. The laboratory is the only one of its kind which is used to develop better methods of business record protection.

Cabinets were tested under conditions which exist in actual fires by being placed in a 1,000 cubic-foot capacity gas furnace. Sixteen Bunsen type furnace burners produced temperatures as high as 1,974 degrees F. during the tests.

In the first of three tests, a Safe-File and an uninsulated steel file, filled with old correspondence, were placed in the mammoth furnace and subjected to intense heat which reached 1,710 degrees before the hour's test was finished. When the five-ton furnace door was raised and the two files removed and cooled, papers in the Safe-File were found unharmed while those in the steel file were reduced to ashes.

In the second test, a Safe-Cabinet containing a supply of papers of various grades was placed in the furnace for an hour during which it was subjected to a temperature reaching 1,720 degrees. The cabinet was then withdrawn and by means of an electric hoist raised 30 feet from the concrete floor and then dropped. The Safe-Cabinet was then turned upside down and put in the furnace again for another hour's "cooking" during which the temperature reached 1,700 degrees. At the conclusion of this test, the Safe-Cabinet doors were cut open with an acetylene torch and the papers inside were found to be intact.

The specifications for the Safe-Cabinet used in the third test require that it withstand exposure to severe heat for a minimum of two hours before the interior reaches a temperature of 300 degrees F. at which point technical failure is said to occur. By means of thermo-

couples, temperatures within the Safe-Cabinet were recorded. Three hours and 43 minutes elapsed before the interior of the cabinet reached 300 degrees F. at which point the cabinet was withdrawn. The highest furnace temperature was 1,974 degrees F. Approximately 20,000 cubic feet of natural gas was consumed in this endurance test. Paper money, deposited in the Safe-Cabinet by executives witnessing the tests, and other papers endured the extreme tests.

During each of the tests, the equipment could be seen in the interior of the roaring furnace through small mica covered windows at the front and rear of the furnace.

G-E Equipment For New Power Stations

ELECTRIC equipment for new hydroelectric power stations to be located at Nantahala and Glenville, N. C., has been ordered by the Nantahala Power & Light Co., from the General Electric Co. The G-E equipment for the Nantahala station consists of two 27,000-kva, 150,000-volt, 3-phase transformers, and a 54,000-kva vertical waterwheel driven generator, together with a motor-generator exciter set. Four G-E 9,000-kva, 150,000-volt, single-phase transformers are to be installed at the Glenville station.

The two new stations will augment the power facilities in this region, where the facilities of the Aluminum Company of America are being extended to meet increased demands for national defense materials, particularly aluminum and aluminum alloys needed by the aeronautics industry. The Glenville station is expected to be ready for operation late in 1941 and the Nantahala station the following year.

New J-M Conduit Fittings Afford Added Flexibility

A COMBINATION of electrical conduit fittings that can be handled in the same manner as a mitred stove-pipe elbow was recently announced by Johns-Manville. A box of these fittings with a shipment of Transite asbestos-cement ducts prepares the contractor for practically any change in direction with a minimum of lost time and materials, according to the company's announcement. Consisting of curved segments, deflection couplings and sweeps, the fittings facilitate the by-passing of obstructions not anticipated in the design period and overcome the expense and delay of special fittings.

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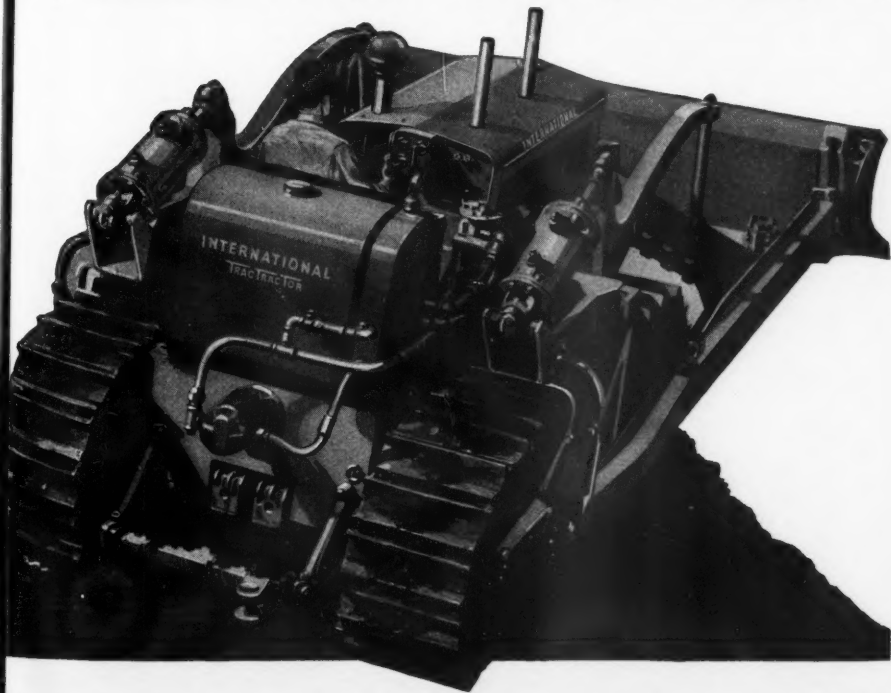
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INTERNATIONAL HARVESTER

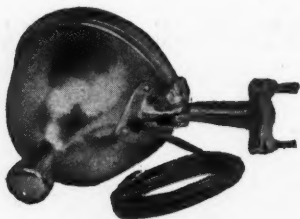
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The fittings permit changes in direction in one or more planes in a very short distance; also the assembly of a spiral type of bend where it is necessary to change direction slightly in one plane and then swing into another plane. Long radius changes of direction can be made when two or more of the fittings are separated by straight sections of duct of the desired length.

These fittings are of asbestos-cement composition and are made to fit both Transite asbestos-cement conduit, which is designed for use without concrete, and the thinner-walled Transite Korduct, which is used in the conventional concrete envelope.

Carpenter Introduces New Light for Heavy-Duty Work

CARPENTER Manufacturing Co., maker of over 60 types of Master-Lights for all purposes, is now offering Type S-B Master-Light—a heavy duty, super-powerful 6 or 12



Type S-B Master-Light

volt, 6 in. searchlight for automobile trucks, tractors, public utility repair crews, etc.

The light is brass and bronze throughout and is chromium plated. The reflector is triple silver plated, has universal joints and can be pointed instantly in any direction. A 100 candle-power bulb projects a beam of brilliant white light of 250,000 candle-power intensity with a range of over a mile.

The switch is built into the lamp casing. The wire is heavily insulated. The light operates direct from the battery of the car and, because of the types of bulb light and construction used, the drain from the battery is not significant.

Further information about this heavy-duty light may be secured from the manufacturer at Cambridge, Mass. This company deals direct with users.

Wakefield Brass Doubles Size of Plant

THE Wakefield Brass Company, manufacturer of commercial lighting equipment, has announced completion of an expansion program doubling the size of its plant in Vermilion, Ohio. The work was handled by The

Austin Company who designed and erected the addition in a record period of three weeks.

A. F. Wakefield, president of the company, which pioneered in the development of plastic reflectors and is now producing many types of plastic lighting units and other fixtures, stated that the additional space will be devoted to handling the company's rapidly expanding business in fluorescent lighting units.

"The superior illumination and low current consumption which characterizes fluorescent tubes has stimulated general modernization of lighting equipment in offices and all types of commercial establishments," Mr. Wakefield pointed out. "This volume, on top of widespread use of fluorescent units in the great majority of new offices, stores and plants is reflected in our current business. Fifty-five per cent of our business this year has been in fluorescent units, as against 3 per cent last year, while our business in other types has increased about 5 per cent. While 1939 was the best year since we entered business in 1907, an increase of 40 per cent over last year's volume is now indicated for 1940."

3-AG Fuses 0 to 8 Amps. Have Underwriters' Approval

LITTELFUSE Incorporated are now manufacturing Underwriters' approved 3-AG glass enclosed fuses in ratings up to 8 amperes for 250 volt AC or DC service or less. This is the first time the Underwriters' Laboratories have approved 3-AG fuses (11" x 1/4" dia.) in current ratings over 3 amperes, according to the manufacturer.

This extension of Underwriters' approved fuses from 3 to 8 amperes opens up many new fields that previously had to use bulky cartridge or plug fuses and their mountings. This applies especially to electric appliances, heavy duty power supplies, amplifiers, radio, motors, etc. Littelfuse's new "sleeve type" 3-AG fuses (4 to 8 amps.) have a separate glass sleeve over the entire fuse element that takes the pressure shocks under short circuits. The 8-amp. rating fuse is powder packed. Bulletin, technical data and prices may be obtained from Littelfuse Incorporated, 4757 Ravenswood Avenue, Chicago, Illinois.

"Quik-Set Safety Scaffold"

A NEW safety steel scaffold, for use by building contractors, electricians, painters, decorators, maintenance departments of private and public buildings, etc., has recently been placed on the market by Mechanical Handling Systems, Inc., 4600 Nancy Ave., Detroit, under the trade name, "Quik-Set Safety Scaffold."

Designed on simple, gravity-locking principles, "Quik-Set" scaffold provides extreme interchangeability with a minimum of separate units. No screws, bolts, or clamps are used, and no tools of any kind are required to erect or dis-assemble the scaffold. The complete scaffold is erected from simple units as

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DEC. 5, 1940

At Royal we begin at the bottom

MAYBE IT'S BECAUSE "thoroughness" is so vital in the building of a fine typewriter. At any rate, we of Royal believe that—in the development of men or machines—the place to begin is the bottom.

We believe, further, that when a man has started at the bottom, *opportunity for advancement is the greatest single spur to efficiency and individual initiative.*

That is why, when one of our young shop employees is ready to tackle a harder job—and a better-paying one—we send him to school here in our plant. The speed with which he advances . . . the job he masters . . . is limited only by his own initiative and ability.

And this policy of "growth from within" has contributed directly to the quality of the machine that bears our name.

For the manufacture of a Royal typewriter requires the touch of fine craftsmanship every step of the way. 2,257 parts must be tooled to microscopic exactness and brought into perfect synchronization!

We believe that our policy of encouraging such craftsmanship—from the bottom up—is one of the most important reasons why Royal is the leading typewriter in the world today.



ROYAL
World's No. 1
TYPEWRITER

easily as an "Erector" toy is put together and with the same versatility.

Quik-Set Scaffold may be leased or purchased outright; and because of its simplicity and time-saving features the manufacturers claim exceptional economy in the number of individual units required to erect any type of scaffold.

Complete information, drawings and photographs, are available on request.

Electronic Level Control

A SIMPLE electronic relay for level control of both conductive and non-conductive fluids and powders is manufactured by Photoswitch Incorporated, Cambridge, Mass. Known as Type P30, this Photoswitch Electronic Level Control is available to meet all specifications including single level control, on and off control at two levels, boiler feedwater control, and tank condensate signals. Installation merely entails attaching a probe fitting to the surface of the tank. Since the equipment includes no mechanical parts, and has an unlimited life, it is replacing more complicated float switches.

For two-level control, Photoswitch probe fittings or electrodes are attached to the tank at levels representing the low point where pumping starts and the high level where pumping stops. These probes are wired to the Electronic Level Control. When the liquid level falls below the lower probe, Level Control closes the circuit which starts the pump, and the tank fills. When the Level rises to the upper probe, the fluid itself acts as a conductor of the small amount of current required for the operation of the Level Control. This opens the pump control circuit.

Even when used with non-conductive fluids the probe circuit carries only milliamperes of current and low voltage. For this reason, Type P30 is used with combustibles. Liquid Level Control Type P30 is recommended in connection with all conductive fluids as well as such insulators as: resin, rubber, latex, paraffin, mica, glass, cement, linseed oil, shellac, mineral oil, wax, waterglass, lacquer, and thinner. Special tank fittings are available for use in corrosive liquids.

Another Ball Park Lighted

THE Washington Senators in 1941 will become the sixth major league baseball club to play under a Westinghouse lighting system as receipt of the order for a 1,500,000 watt floodlighting installation for Griffith Stadium in Washington, D. C. is announced by that

company. This newest major league system will employ 740 floodlights supported on eight towers rising to a height of 150 feet above the playing field.

Griffith Stadium is the ninth major league park to be lighted since the first major night game at Cincinnati in 1935.

Equipment Literature

Small Power Transformers

ALLIS-Chalmers Mfg. Company, Pittsburgh Works, has issued a new bulletin B-6084 on modern small power transformers—designed and built to meet the user's requirements for efficient, trouble free service and long life. Its 16 pages are filled with assembly and installation views.

Simplex Jacks

A NEW 60-page junior catalog designated No. 40, that readily fits into the vest pocket, has just been issued by Templeton, Kenly & Co., 1020 S. Central Ave., Chicago.

It fully describes the construction, application and gives specifications for the 300 plus sizes and types of Simplex jacks. There are over 100 illustrations.

Simplex automatic raising and lowering jacks, screw jacks, journal jacks, geared jacks and the more specialized jacks for various industries such as mining, oil, utilities, railroad, aircraft, construction and marine are covered.

Vari-Typer catalog

A 16-page catalog describing the Vari-Typer—a compact, electric office composing machine—has been issued by Ralph C. Coxhead Corp., 333 Sixth Ave., New York City. This new catalog is attractively illustrated and printed in two colors and gives in detail the features of the Vari-Typer composing machine.

The Vari-Typer employs a wide selection of changeable type faces and variable spacing for the rapid, economical preparation of distinctive copy for all modern processes of reproduction. The machine can be operated by any competent typist after proper instruction. The keyboard has a standard arrangement of letters, permitting operation by touch typing.

Copies of the descriptive catalog may be obtained from the manufacturer.

Circuit Breaker Leaflet

ALLIS-Chalmers Mfg. Company, Boston Works, announces leaflet B-6129 describing the company's types DZ-60A to DZ-200A oil circuit breakers for medium capacity applications for indoor service. It illustrates and describes this quick clearing (8 cycle) breaker of non-oil-throwing design for metal enclosed switchgear, cell, framework, or flat

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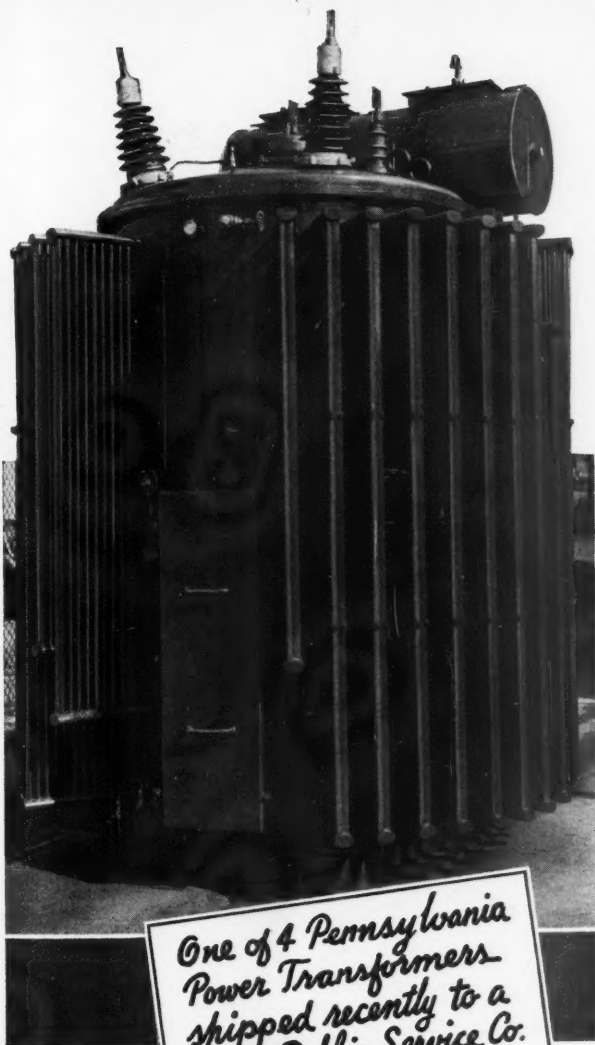
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surface mounting, rated 2000 amperes or less, at 15,000 volts, and up to 500,000 kva interrupting capacity. It covers details of design, application and dimensions.

Explosion-proof Combustible Gas Alarm

THE new M.S.A. Explosion-proof Combustible Gas Alarm is completely described in a bulletin just issued by Mine Safety Appliances Company of Pittsburgh, Pa. This latest Alarm is for safely and continuously sampling atmospheres where combustible gases and vapors may be present. The unit provides instant warning when gas concentrations exceed a predetermined limit, and may be adapted for automatic process or ventilation control.

The M.S.A. Combustible Gas Alarm including sampling pump is contained in an underwriters'-approved explosion-proof conduit, and can be safely installed in gaseous atmospheres, eliminating the need for long sampling lines. The instrument is specifically calibrated for the particular gas or vapor which it will test. It is so constructed that the operator can adjust the measuring circuit to operate a warning signal at any predetermined point within a wide range.

Details of construction and operation are fully explained in Bulletin DT-2. Copies may be secured from Mine Safety Appliances Co., Braddock, Thomas and Meade Sts., Pittsburgh, Pa.

Insulating Firebrick

THE Babcock & Wilcox Company, 85 Liberty Street, New York, N. Y., has just issued, through its refractories division, a new bulletin on Insulating Firebrick.

The booklet includes an exposition of the advantages of insulating firebrick in general, and their application to boiler and industrial furnaces. It also describes the relationship between weight, heat-conductivity and heat-storage capacity. The importance of light weight is graphically illustrated by means of a three-curve chart, which gives the weight, thermal conductivity and heat-storage of the six B&W Insulating Firebrick. These curves show how the latter two values increase with increased weight, and indicate the desirability of using a brick having not only the proper temperature resistance but the lightest weight.

A handy guide to the application of B&W Insulating Firebrick to a wide variety of industrial furnaces, is provided in the form of tables. Based on experience over a ten-year period, these tables show which of the several B&W Insulating Firebrick are adapted to each type of furnace, kiln or oven.

Data on panel walls, suspended arches, light-weight insulating concretes, and special mortars for use with B&W Insulating Firebrick, are also included.

Curves and technical data amplify the text; the bulletin is of considerable value to furnace engineers and operators for reference purposes. The new bulletin is designated R-2-G.

New Appointments

American Engineering Co.

MR. C. E. Harrison, vice president of the American Engineering Company, Philadelphia, Pa., has been appointed general manager. He will have general supervision of the entire activities of the company in addition to his duties as vice president.

Mr. Harrison is a mechanical engineering graduate of the Carnegie Institute of Technology. He served in the U. S. Navy and first became associated with the American Engineering Company in 1913 as a field inspector.

In 1916, he became manager of the service department and remained in that capacity until 1936 when he was made works manager. He was elected to the vice presidency in 1938.

Mr. Harrison has been actively identified with the work of all the divisions of the company—Taylor Stokers, Lo-Hed Hoists, Hele-Shaw Pumps and A-E-CO Marine Machinery. He has been granted a total of 50 patents in the United States and foreign countries.

A. G. A. E. M.

THE appointment of James R. Abrams as advertising director of the Domestic Gas Range Division of the Association of Gas Appliance and Equipment Manufacturers has been announced by Lloyd C. Ginn, chairman of the Association's "CP" Sales Promotion Committee.

Mr. Abrams, who since 1933 was associated with Congoleum-Nairn, Inc., will assist in the promotion of "CP" (Certified Performance) Gas Ranges now being carried on nationally by the Association. His appointment becomes immediately effective. He will serve under R. S. Agee, sales promotion manager of the Range Division, with headquarters in New York City.

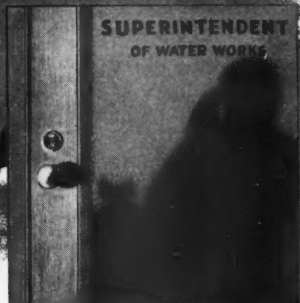
Burkay Company

APPPOINTMENT of H. S. Boyle, as vice-president in charge of sales and advertising of the Burkay Company, of Toledo, Ohio, has been announced by Joseph W. Robinson, president. The selection of Mr. Boyle for this important post is in keeping with the general expansion policy of the company. The Burkay "volume-flow" system, although relatively a newcomer in the gas appliance business, has already made itself felt in this important field of gas development. Burkay's high and low temperature, and booster recovery systems are receiving keen attention from gas men, as well as from users of volume hot water.

Walter G. Groth, vice-president, who has been handling the gas utility development of this business, will continue his activities as sales manager—Eastern Division. The Burkay Pacific Co., of Los Angeles, under the direction of Walter E. Campbell will serve the utilities and dealers west of the Rockies. The Burkay Sales Co., of New York, under the direction of Sam Sperans, well known hotel and restaurant authority, will represent the company in the New York Metropolitan area.

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From the standpoint of the
SUPERINTENDENT
Trident
WATER METERS

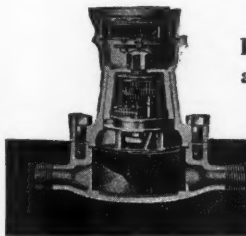


minimize operating costs . . .

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The interchangeability of Trident Meter construction makes possible an extremely low inventory for replacement parts . . . you need carry no obsolete parts for old models . . . new parts fit all models. Depreciation and obsolescence can virtually be written off the books . . . because improved interchangeable parts make even 40-year-old Trident Meters as good as new . . . or better!

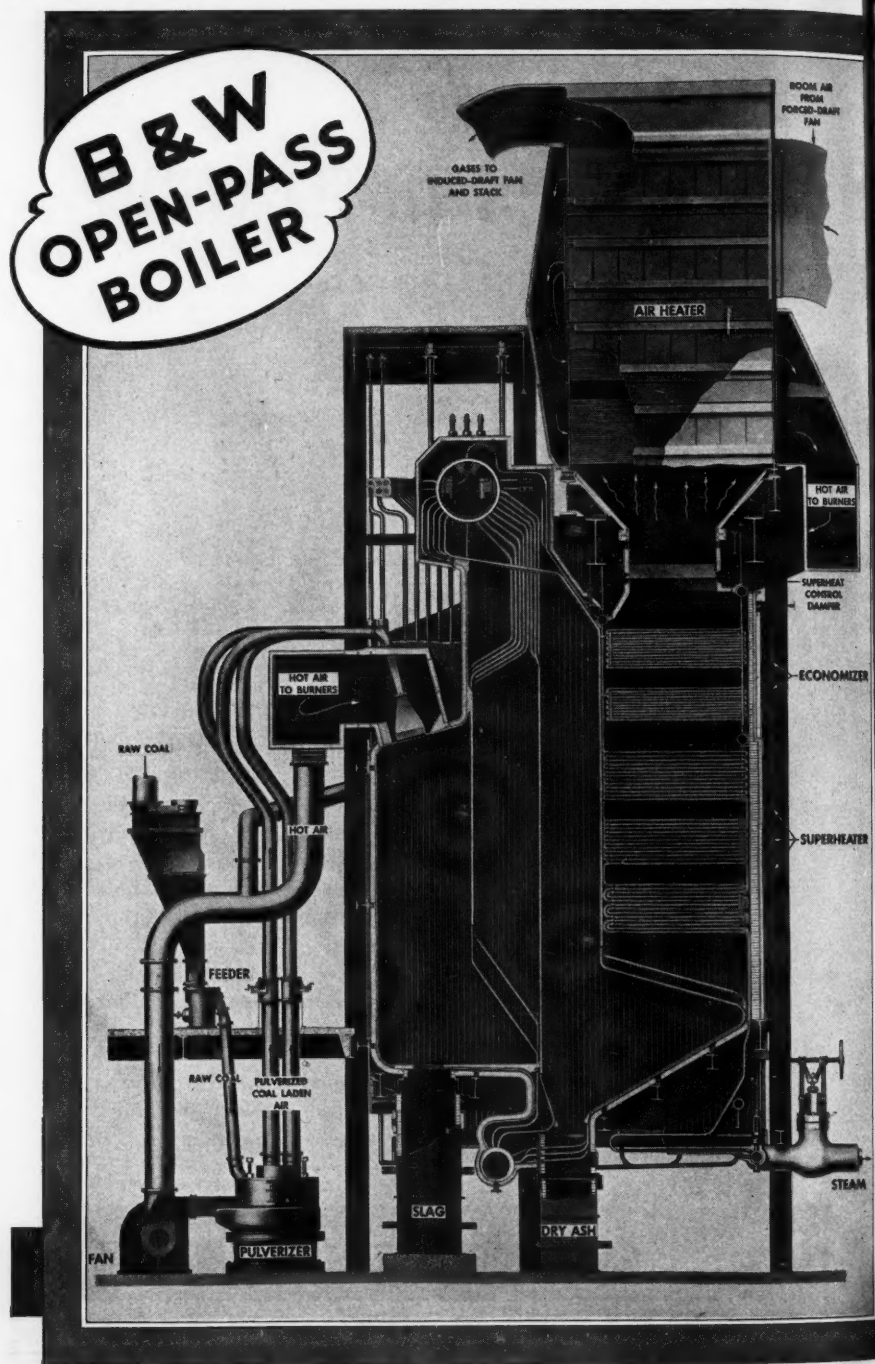
Trident simplicity and extreme accuracy, beside insuring maximum water revenue, also mean better testing repaired meters.



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Attacks the Slag Problem at its roots

the B&W Open-Pass Boiler, the problem of realizing trouble-free superheater performance is attacked by a method that goes far beyond such expedients as tube-spacing and slag-removal apparatus employed in the past. It strikes at the cause of slag-fouling of superheater tubes in high-pressure, high-temperature units. It does not merely attempt to relieve a condition that at one time appeared to be incurable because of the fixed fusing-temperature of any given coal ash and the necessity of delivering gases of high temperature to the superheater.

In the Open-Pass Boiler, this problem is attacked directly at its roots. There is the complete elimination of the ash, and the better methods of decreasing the quantity of ash carried to the super-

heater. Furthermore, this ash is all dry and granular, instead of sticky in lanes when it reaches the superheater, because there are no lanes of higher-than-average temperature gases.

And, these desirable results are obtained in a unit having features of inherent economy, without sacrificing other desirable operating characteristics such as stability of flame and ease of slag tapping over a wide range of loads.

All these form sufficient reason why the boiler should depart radically from traditional designs. Its adoption for 10 stations, with units having a combined capacity of over 9,500,000 pounds of steam per hour, is evidence of the soundness of the principles on which the design of the boiler is based.

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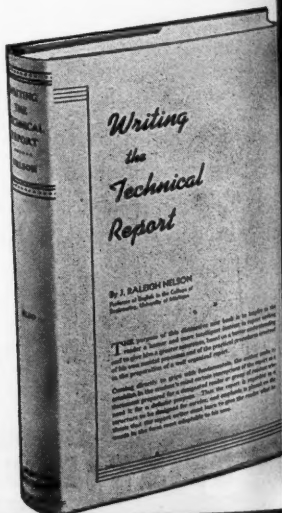
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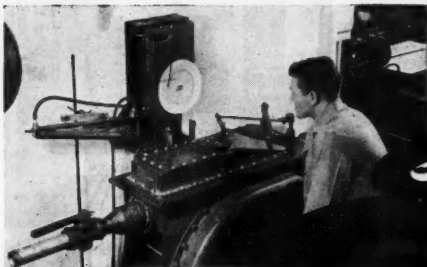
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Research

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Yesterday:

The late George Westinghouse founded the firm that is now the Pittsburgh Equitable Meter Company in 1886. He combined research and sound engineering principles with a masterful inventive ability. His early efforts in the field of gas measurement and control provided the nucleus around which EMCO Meters, Regulators and accessory equipment have been, over a 50 year period, continuously improved and expanded.



Today:

That the inventive and development heritage of the founder has been perpetuated is readily apparent in the accomplishments of the EMCO organization to date. As various measurement and control needs arose in the expanding gas industry, EMCO engineers and researchers were able to provide the equipment to fill them. Such outstanding developments as the EMCO Type 38 Orifice Meter, the EMCO-RECTOR, the EMCO-McGaughy Integrator, the EMCO "1001" Regulator, and the EMCO Pilot Loading Regulator are today available to meet the current requirements of the industry. Many innovations and improvements in the construction of older basic products have been made to meet today's demands for more accurate measurement and control. Every aid of modern science is being utilized to provide the best possible value.

Tomorrow:

The wonders of tomorrow will come from the work of today's scientists. Already in the gas industry, future problems involving longer lines, higher pressures and heavier loads are being studied. In EMCO laboratories and on EMCO drawing boards are now being evolved the measurement and control equipment which will be needed to serve the expanding demands of this great industry. In addition to company operated laboratories, the Pittsburgh Equitable Meter Company supports a meter fellowship at the world-renowned Mellon Institute. Scientists here are constantly searching for better metering methods and materials. The results of such research are incorporated in EMCO products. Search and research are used to maintain leadership.

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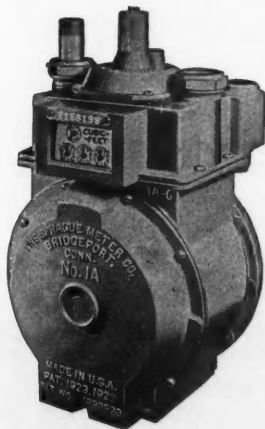
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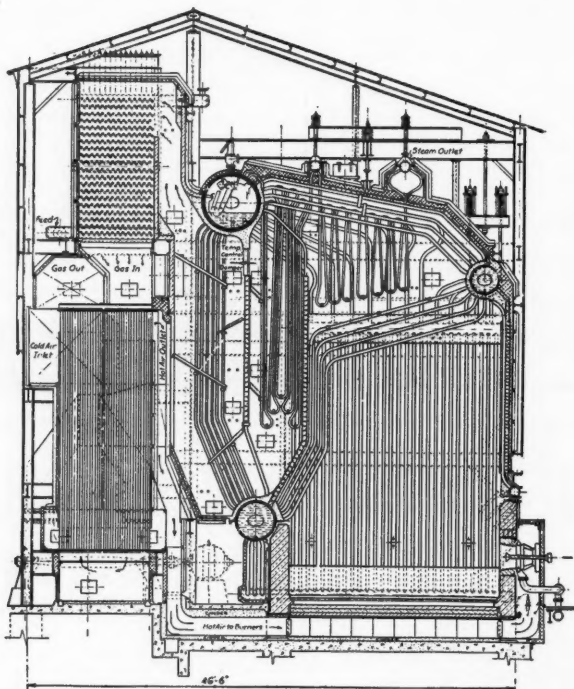
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THIS BOOK the author covers in detail all phases of the generation, transmission, and distribution of electrical energy—maintaining a level treatment throughout, easily grasped by the reader with the most modest mathematical attainments.

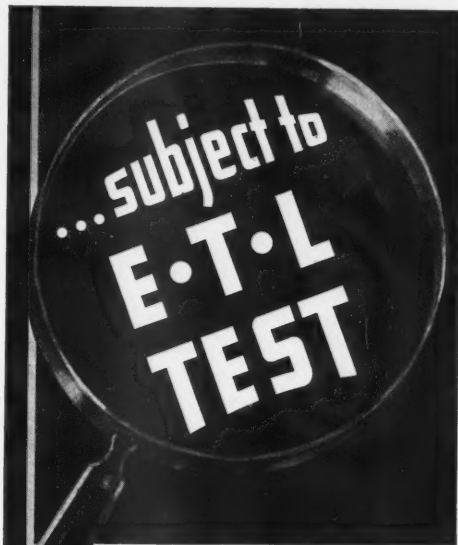
THE DIFFERENT TYPES of generators are described as well as the different prime movers employed, reciprocating engines, turbines, internal-combustion engines, and steam wheels. Alternating and direct-current systems are discussed and compared with formulas for calculation of transmission lines for both systems. Space is also given to various station accessories such as voltage regulators, lightning arresters, and other protective equipment.



This edition retains the typical, practical Croft treatment throughout, but includes considerable new material relating to developments in the field, turbines, the network system, lightning protective apparatus, description and illustrations of a number of types of voltage regulators, etc.

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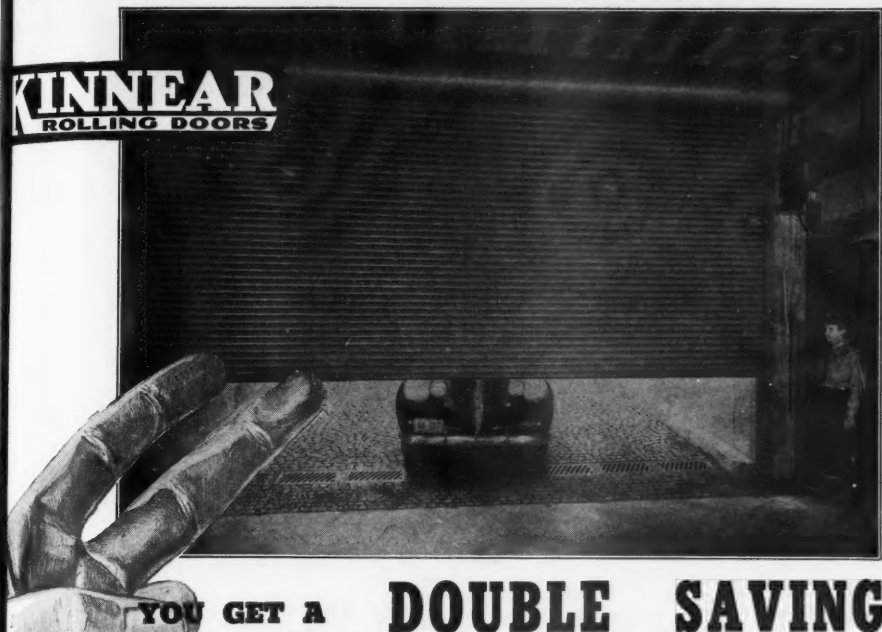
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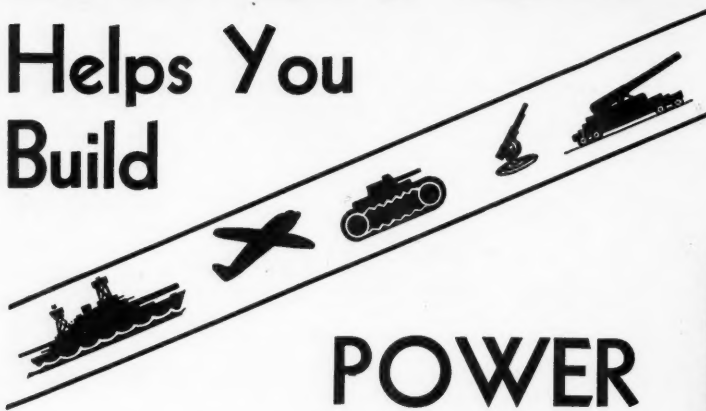
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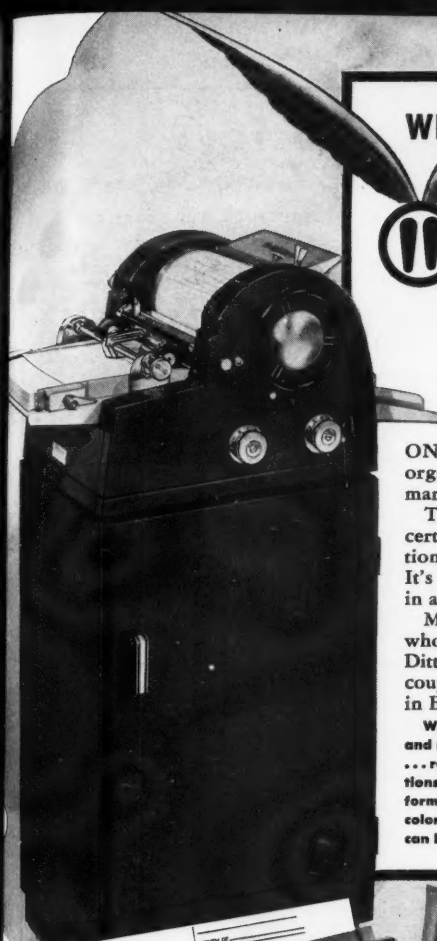
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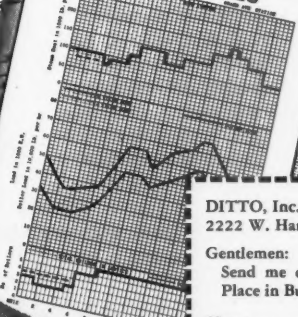
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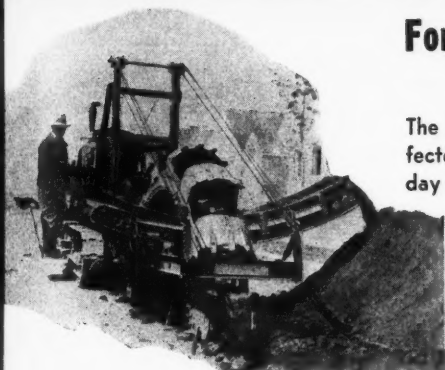
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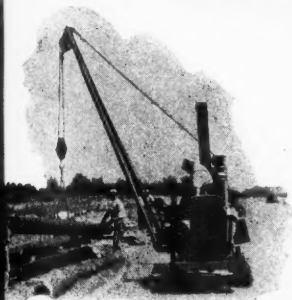
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